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No. 10325

United States
Circuit Court of Appeals

For the Ninth Circuit.

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME III

Pages 995 to 1068

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

FILED

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PAUL P. O'BRIEN,
Clerk



No. 10325

United States
Circuit Court of Appeals
For the Ninth Circuit.

H. HARRY MEYERS,

Appellant,

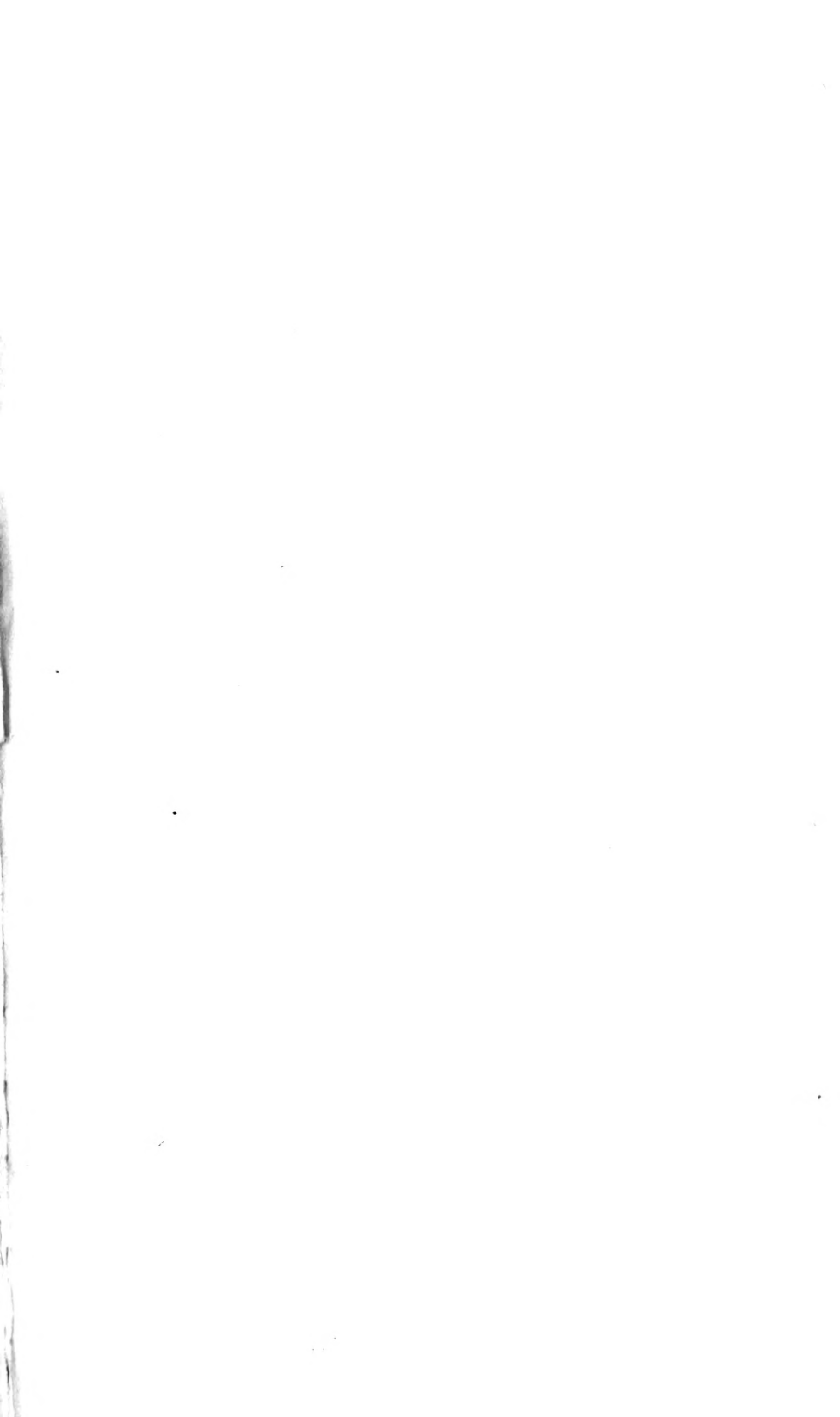
VS.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME III
Pages 995 to 1068

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division



WINTHROP L. BROWN,

A witness on behalf of the plaintiff, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a banker by occupation employed by the Bank of America, National Trust & Savings Association, Los Angeles, California main office. I formerly worked for the Seaboard National Bank, that was taken over by the Bank of America. The A. B. A. Number is 16—128. That is the number that appears on the checks to identify the bank.

I recognized government's Exhibits 182, 183 and 184. They are in my custody and control. That is true of the first exhibits and the other two. They are permanent records of the bank. The three exhibits admitted without objection subject to substitution of copies.

1900-1901

1901-1902

1902-1903

1903-1904

1904-1905

1905-1906

1906-1907

1907-1908

1908-1909

1909-1910

1910-1911

1911-1912

1912-1913

1913-1914

(Testimony of Winthrop L. Brown.)

PLAINTIFF'S EXHIBIT No. 183

[Stamped]: Card Out [In pencil]: ✓ 4/14/33. W. Markowitz AU J. F. Simons

Sheet No. 1-1933

THE SEABOARD NATIONAL BANK
Of Los AngelesTelephones: Residence No. _____
Business No. _____Name—The Atkins Corporation
Address—1126 Pacific National Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>123</i>				[In pencil]: 1 da		
					Mar 24 '33	500.00†	Mar 24 '33	500.00†•
					Apr 13 '33	3,217.15	Apr 13 '33	3,717.15 •
					Apr 14 '33		Apr 14 '33	3,442.15 •
					Apr 15 '33		Apr 15 '33	3,277.15 •
500.00								
3,717.15	Apr 14 '33	275.00—			Apr 15 '33		Apr 15 '33	2,869.84 •
3,442.15	Apr 15 '33	165.00—			Apr 17 '33		Apr 17 '33	2,619.84 •
2,277.15	Apr 15 '33	100.00—	50.00—	44.00—	Apr 20 '33		Apr 20 '33	2,375.43 •
	Apr 15 '33	26.00—	26.00—	18.00—	Apr 21 '33		Apr 21 '33	2,325.43 •
	Apr 15 '33	8.00—	26.00—	12.00—				
	Apr 15 '33	37.50—	59.81—					
2,869.84	Apr 17 '33	250.00—			Apr 22 '33		Apr 22 '33	1,961.47 •
2,619.84	Apr 20 '33	244.41—			Apr 22 '33		Apr 22 '33	1,564.44 •
2,375.43	Apr 21 '33	50.00—						
2,325.43	Apr 22 '33	10.00—	140.00—	17.81—				
	Apr 22 '33	7.93—	15.77—	14.55—				
	Apr 22 '33	82.90—	75.00—					
1,961.47	Apr 22 '33	293.48—	103.55—					
1,564.44	Apr 24 '33	2.10—	2.70—	14.75—				
	Apr 24 '33	100.00—	72.12—					
1,372.77	Apr 24 '33	6.00—	16.05—					
1,350.72	Apr 25 '33	37.94—	384.95—	8.00—				
	Apr 25 '33	130.50—	25.00—	22.30—				
	Apr 26 '33	100.00—	5.95—	4.81—				
742.03	Apr 26 '33	17.20—						
	Apr 27 '33	150.00—						
614.07	Apr 27 '33	12.00—	16.00—	200.00—				
464.07	Apr 27 '33	12.00—						
	Apr 28 '33	1.50—	100.00—					
1,224.07	Apr 28 '33	23.28—						
1,122.57	Apr 29 '33	121.00—						
1,099.29	May 1 '33	1.04—						
978.29	May 1 '33	200.00—						
977.25	May 1 '33	60.00—	31.10—	2.75—				
777.25	May 1 '33	100.00—	50.00—	44.00—				
683.40	May 1 '33	25.00—						
1,489.40	May 2 '33	33.33—	20.00—	55.00—				
1,464.40	May 2 '33	22.00—						
	May 3 '33	20.00—	14.00—	20.00—				
1,334.07	May 3 '33	10.00—	30.00—					
1,280.07	May 4 '33	50.00—	21.28—	101.09—				
1,240.07	May 4 '33	100.00—						
	May 4 '33	50.00—						
967.70	May 5 '33	16.90—						
917.70	May 6 '33	50.00—						
900.80								

† Figures circled in pencil.

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 1-1933—over

THE SEABOARD NATIONAL BANK
of Los Angeles

Telephones: Residence No.
Business No.

Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance	Brought Forward					
850.80 s	May 6 '33	50.00—	50.00—	50.00—	May 6 '33	850.80	May 6 '33	700.80 •
700.80	May 8 '33	25.00—	40.87—		May 6 '33		May 8 '33	634.93 •
634.93	May 8 '33	50.00—			May 8 '33		May 8 '33	584.93 •
584.93	May 8 '33	12.00—			May 8 '33		May 8 '33	572.93 •
572.93					May 8 '33	1,823.47	May 8 '33	2,396.40 •
2,396.40	May 9 '33	15.00—	25.00—	25.00—				
	May 9 '33	12.00—	12.00—		May 9 '33		May 9 '33	2,307.40 •
2,307.40	May 9 '33	100.00—			May 9 '33		May 9 '33	2,207.40 •
2,207.40	May 10 '33	12.00—	7.00—	32.00—				
	May 10 '33	135.00—			May 10 '33		May 10 '33	2,021.40 •
2,021.40	May 10 '33	50.00—			May 10 '33		May 10 '33	1,971.40 •
1,971.40	May 11 '33	100.00—	150.00—		May 11 '33		May 11 '33	1,721.40 •
1,721.40	May 11 '33	50.00—	100.00—		May 11 '33		May 11 '33	1,571.40 •
1,571.40	May 11 '33	100.00—	75.00—		May 11 '33	193.75	May 11 '33	1,590.15 •
1,590.15	May 12 '33	100.00—	10.00—	10.00—				
	May 12 '33	10.00—			May 12 '33		May 12 '33	1,460.15 •
1,460.15	May 12 '33	12.00—	100.00—	50.00—	May 12 '33		May 12 '33	1,298.15 •
1,298.15	May 13 '33	100.00—	100.00—	128.60—	May 13 '33		May 13 '33	969.55 •
969.55	May 13 RT	15.00—			May 13 '33	230.00	May 13 '33	1,184.55 •
1,184.55	May 15 '33	54.16—	10.00—	14.00—	May 15 '33	375.00		
	May 15 '33	100.00—	50.00—	44.00—				
	May 15 '33	55.00—	200.00—		May 15 '33		May 15 '33	1,032.39 •
1,032.39					May 15 RT	15.00	May 15 '33	1,047.39 •
1,047.39					May 15 '33	249.75	May 15 '33	1,297.14 •
1,297.14	May 16 '33	35.00—			May 16 '33		May 16 '33	1,262.14 •
1,262.14	May 17 '33	25.00—			May 17 '33		May 17 '33	1,237.14 •
1,237.14	May 17 '33	2.00—			May 17 '33	364.98	May 17 '33	1,600.12 •
1,600.12	May 18 '33	100.00—	40.00—		May 18 '33		May 18 '33	1,460.12 •
1,460.12	May 18 '33	100.00—			May 18 '33		May 18 '33	1,360.12 •
					May 18 '33	2,750.00	May 18 '33	4,110.12 •
[Illegible]	May 19 '33	10.00	20.78	20.00	May 19 '33		May 19 '33	4,160.90 •
							May 19 '33	4,110.12 •
4,110.12	May 19 '33	3.10—			May 19 '33		May 19 '33	4,107.02 •
							May 19 '33	4,056.24 •
4,056.24					May 19 '33	74.75	May 19 '33	4,130.99 •
4,130.99					May 20 '33	74.75		
					May 20 '33	74.75	May 20 '33	4,280.49 •
4,280.49	May 22 '33	10.00—	50.00—		May 22 '33		May 22 '33	4,220.49 •
4,220.49	May 22 '33	150.00—			May 22 '33	906.54	May 22 '33	4,977.03 •
4,977.03	May 23 '33	25.00—			May 23 '33		May 23 '33	4,952.03 •
4,952.03	May 23 '33	50.00—			May 23 '33		May 23 '33	4,902.03 •
4,902.03					May 23 '33	1,076.63	May 23 '33	5,978.66 •
5,978.66	May 23 '33	6.00—			May 23 '33		May 23 '33	5,972.66 •

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(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 2-1933—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance	Brought Forward	4.25				
5,972.66 s	May 24 '33	2,875.00—	4.50—	25.00—	May 24 '33	5,972.66		
	May 24 '33	100.00—			May 24 '33		May 24 '33	2,968.16 *
2,968.16	May 24 '33	2,785.00—	2,875.00		May 24 '33		May 24 '33	3,058.16 *
3,058.16	May 24 '33	225.00—			May 24 '33	124.75	May 24 '33	2,957.91 *
2,957.91	May 25 '33	100.00—	24.00—		May 25 '33		May 25 '33	2,833.91 *
2,833.91	May 25 '33	100.00—			May 25 '33		May 25 '33	2,733.91 *
2,733.91	May 25 '33	100.00—	100.00—		May 25 '33	829.87	May 25 '33	3,363.78 *
3,363.78	May 26 '33	100.00—	5.15—		May 26 '33		May 26 '33	3,258.63 *
3,258.63	May 26 '33	3.10—			May 26 '33		May 26 '33	3,255.53 *
3,255.53	May 27 '33	50.00—	98.00—	37.00—				
	May 27 '33	50.00—			May 27 '33		May 27 '33	3,020.53 *
3,020.53	May 27 '33	5.00—			May 27 '33	525.17	May 27 '33	3,540.70 *
3,540.70	May 29 '33	122.00—	2.06—	10.00—				
	May 29 '33	12.50—			May 29 '33		May 29 '33	3,394.14 *
3,394.14	May 29 '33	24.70—			May 29 '33		May 29 '33	3,369.44 *
3,369.44	May 31 '33	10.52—	8.33—	5.95—				
	May 31 '33	100.00—	12.00—	5.00—				
	May 31 '33	22.04—	6.37—	3.00—				
	May 31 '33	22.73—	45.12—		May 31 '33		May 31 '33	3,128.38 *
3,128.38	May 31 '33	40.20—	12.51—	100.00—				
	May 31 '33	25.93—			May 31 '33		May 31 '33	2,949.74 *
2,949.74	May 31 '33	54.17—	50.00—	28.00—				
	May 31 '33	100.00—	55.00—	44.00—	May 31 '33		May 31 '33	2,618.57 *
2,618.57	Jun 1 '33	2.28—			Jun 1 '33		Jun 1 '33	2,616.29 *
2,616.29	Jun 1 '33	100.00—	50.00—	35.31—	Jun 1 '33		Jun 1 '33	2,430.98 *
2,430.98	Jun 1 '33	3.10—			Jun 1 '33		Jun 1 '33	2,427.88 *
2,427.88	Jun 1 '33	25—			Jun 1 '33		Jun 1 '33	2,427.63 *
2,427.63	Jun 2 '33	1.00—			Jun 2 '33		Jun 2 '33	2,426.63 *
2,426.63	Jun 2 '33	250.00—			Jun 2 '33		Jun 2 '33	2,176.63 *
2,176.63	Jun 2 '33	23.41—			Jun 2 '33	954.66	Jun 2 '33	3,107.88 *
3,107.88	Jun 3 '33	50.00—			Jun 3 '33		Jun 3 '33	3,057.88 *
3,057.88	Jun 5 '33	16.00—			Jun 5 '33	206.22	Jun 5 '33	3,248.10 *
3,248.10	Jun 6 '33	50.00—	10.00—	10.00—				
	Jun 6 '33	25.00—	106.90—		Jun 6 '33		Jun 6 '33	3,046.20 *
3,046.20	Jun 6 '33	100.00—			Jun 6 '33		Jun 6 '33	2,946.20 *
2,946.20	Jun 7 '33	50.00—					Jun 7 '33	2,896.20 *
2,896.20					Jun 7 '33	5,259.21	Jun 7 '33	8,155.41 *
8,155.41	Jun 8 '33	200.00—	638.12—		Jun 8 '33		Jun 8 '33	7,317.29 *
7,317.29	Jun 8 '33	125.00—			Jun 8 '33	204.76	Jun 8 '33	7,397.05 *
7,397.05	Jun 9 '33	100.00—	100.00—	50.00—	Jun 9 '33		Jun 9 '33	7,147.05 *
7,147.05	Jun 9 '33	204.86—			Jun 9 '33		Jun 9 '33	6,942.19 *
6,942.19	Jun 10 '33	98.00—					Jun 10 '33	6,844.19 *

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 2-1933

W. Markowitz
J F Somons 1 sigTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>425</i>						
6,844.19 s					Jun 10 '33	10.00		
					Jun 10 '33	6,844.19		
					Jun 10 '33	266.00	Jun 10 '33	7,120.19 *
7,120.19	Jun 10 '33	50.00—			Jun 10 '33		Jun 12 '33	7,070.19 *
7,070.19	Jun 12 '33	147.75—	6.00—		Jun 12 '33		Jun 12 '33	6,916.44 *
6,916.44	Jun 12 '33	100.00—			Jun 12 '33		Jun 12 '33	6,816.44 *
6,816.44	Jun 13 '33	6.25—	34.34—		Jun 13 '33		Jun 13 '33	6,775.85 *
6,775.85	Jun 13 CC	.55—			Jun 13 '33		Jun 13 '33	6,775.30 *
6,775.30					Jun 14 '33	210.00	Jun 14 '33	6,985.30 *
6,985.30	Jun 15 '33	71.14—	15.67—	11.60—				
	Jun 15 '33	59.90—	17.83—	12.50—				
	Jun 15 '33	2.50—	35.00—	6.15—	Jun 15 '33		Jun 15 '33	6,753.01 *
6,753.01	Jun 15 '33	35.00—	26.00—	50.00—	Jun 15 '33	107.60		
	Jun 15 '33	55.00—	54.16—	100.00—				
	Jun 15 '33	44.00—			Jun 15 '33		Jun 15 '33	6,496.45 *
6,496.45	Jun 16 '33	5.00—	9.00—	50.00—				
	Jun 16 '33	25.00—	4.00—	29.83—				
	Jun 16 '33	2.70—	128.60—	186.49—	Jun 16 '33		Jun 16 '33	6,055.83 *
6,055.83	Jun 16 '33	8.00—			Jun 16 '33		Jun 16 '33	6,047.83 *
6,047.83	Jun 17 '33	20.00—			Jun 17 '33		Jun 17 '33	6,027.83 *
6,027.83					Jun 17 '33	407.51	Jun 17 '33	6,435.34 *
6,435.34	Jun 19 '33	5.64—	100.00—	22.40—	Jun 19 '33		Jun 19 '33	6,307.30 *
6,307.30	Jun 19 RT	10.00—			Jun 19 '33		Jun 19 '33	6,297.30 *
6,297.30					Jun 19 '33	49.60	Jun 19 '33	6,346.90 *
6,346.90	Jun 20 CC	.40—	15.00—	250.00—	Jun 20 '33	135.00	Jun 20 '33	6,216.50 *
6,216.50	Jun 21 '33	75.00—	200.00—		Jun 21 '33		Jun 21 '33	5,941.50 *
5,941.50	Jun 22 '33	5.00—	106.20—				Jun 22 '33	5,830.30 *
5,830.30	Jun 22 '33	50.00—					Jun 22 '33	5,780.30 *
5,780.30	Jun 22 '33	50.00—			Jun 22 '33	316.61	Jun 22 '33	6,046.91 *
6,046.91	Jun 23 '33	78.30—	911.59—	150.00—				
	Jun 23 '33	5.55—			Jun 23 '33		Jun 23 '33	4,901.47 *
4,901.47	Jun 23 '33	59.12—			Jun 23 '33		Jun 23 '33	4,842.35 *
4,842.35	Jun 24 '33	3.56—	1.00—	1.00—				
	Jun 24 '33	1.00—			Jun 24 '33		Jun 24 '33	4,835.79 *
4,835.79	Jun 24 '33	100.00—			Jun 24 '33	338.93	Jun 24 '33	5,074.72 *
5,074.72	Jun 26 '33	98.00—			Jun 26 '33		Jun 26 '33	4,976.72 *
4,976.72					Jun 26 '33	104.70	Jun 26 '33	5,081.42 *
5,081.42					Jun 28 '33	517.08	Jun 28 '33	5,598.50 *
5,598.50	Jun 29 '33	200.00—			Jun 29 '33		Jun 29 '33	5,398.50 *
5,398.50	Jun 29 RT	10.00—						
	Jun 29 RT	15.00—			Jun 29 '33		Jun 29 '33	5,373.50 *
5,373.50	Jun 30 '33	100.00—	35.00—	14.48—				
	Jun 30 '33	25.00—	170.71—		Jun 30 '33		Jun 30 '33	5,028.31 *
5,028.31	Jun 30 '33	54.17—			Jun 30 '33		Jun 30 '33	4,974.14 *
4,974.14	Jun 30 '33	50.00—	55.00—	26.00—	Jun 30 RT	10.00	Jun 30 '33	4,853.14 s

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 3-1933—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail		Date	Deposits	Date	New Balance
		Balance Brought Forward					
4,853.14 s	Jun 30 '33	44.00—	100.00—	Jun 30 '33	4,853.14 s		
	Jun 30 '33	16.00—	25.00—	Jun 30 RT	15.00		
4,884.04	Jul 1 CC	1.88—		Jun 30 '33	211.50	Jun 30 '33	4,884.04 *
4,882.16	Jul 1 '33	100.00—		Jul 1 '33		Jul 1 '33	4,882.16 *
4,782.66	Jul 3 '33	200.00—		Jul 3 '33		Jul 1 '33	4,782.16 *
4,582.16	Jul 5 '33	1.00—		Jul 5 '33		Jul 3 '33	4,582.16 *
4,581.16	Jul 5 '33	125.00—	50.00—	Jul 5 '33	19.75	Jul 5 '33	4,581.16 *
				Jul 5 '33	731.85	Jul 5 '33	5,157.76 *
5,157.76	Jul 6 '33	100.00—		Jul 6 '33		Jul 6 '33	5,057.76 *
5,057.76	Jul 6 '33	300.00—	140.00—	Jul 6 '33		Jul 6 '33	4,617.76 *
4,617.76	Jul 6 '33	250.00—		Jul 6 '33	258.45	Jul 6 '33	4,626.21 *
4,626.21	Jul 7 '33	100.00—		Jul 7 '33		Jul 7 '33	4,526.21 *
4,526.21	Jul 7 '33	150.00—		Jul 7 '33		Jul 7 '33	4,376.21 *
4,376.21				Jul 7 '33	537.00	Jul 7 '33	4,913.21 *
4,913.21	Jul 8 '33	2.50—	25.00—	Jul 8 '33	1,732.24	Jul 8 '33	6,117.95 *
6,117.95	Jul 10 '33	87.50—	98.00—			Jul 10 '33	5,932.45 *
5,932.45	Jan 10 '33	92.00—		Jan 10 '33		Jan 10 '33	5,840.45 *
5,840.45	Jul 11 '33	50.00—		Jul 11 '33		Jul 11 '33	5,790.45 *
5,790.45	Jul 11 '33	7.75—		Jul 11 '33	295.00	Jul 11 '33	6,077.70 *
6,077.70	Jul 12 '33	15.57—	17.65—	Jul 12 '33		Jul 12 '33	6,016.13 *
6,016.13	Jul 12 '33	22.50—		Jul 12 '33	327.00	Jul 12 '33	6,320.63 *
6,320.63	Jul 13 '33	20.00—	6.70—				
	Jul 13 '33	1.03—	62.45—	Jul 13 '33		Jul 13 '33	6,026.85 *
6,026.85	Jul 13 '33	200.00—	100.00—	Jul 13 '33		Jul 13 '33	5,726.85 *
5,726.85	Jul 13 '33	25.23—		Jul 13 '33		Jul 13 '33	5,701.62 *
5,701.62	Jul 14 '33	25.00—	11.90—				
	Jul 14 '33	8.19—	8.70—	Jul 14 '33		Jul 14 '33	5,640.87 *
5,640.87	Jul 14 '33	130.00—		Jul 14 '33	293.00	Jul 14 '33	5,803.87 *
5,803.87	Jul 15 '33	47.75—	50.00—			Jul 15 '33	5,706.12 *
5,706.12	Jul 15 '33	62.50—	30.00—				
	Jul 15 '33	31.00—	100.00—				
	Jul 15 '33	95.00—		Jul 15 '33		Jul 15 '33	4,973.46 *
4,973.46	Jul 17 '33	139.35—		Jul 17 '33		Jul 17 '33	4,834.11 *
4,834.11	Jul 17 '33	4.00—	50.00—	Jul 17 '33		Jul 17 '33	4,780.11 *
4,780.11	Jul 18 '33	42.00—		Jul 18 '33		Jul 18 '33	4,738.11 *
4,738.11				Jul 18 '33	275.48	Jul 18 '33	5,013.59 *
5,013.59	Jul 19 '33	35.00—		Jul 19 '33		Jul 19 '33	4,978.59 *
4,978.59	Jul 19 '33	30.00—		Jul 19 '33	105.00	Jul 19 '33	5,053.59 *
5,053.59	Jul 20 '33	40.00—	20.00—	Jul 20 '33		Jul 20 '33	4,993.59 *
4,993.59	Jul 21 '33	25.00—	75.00—			Jul 21 '33	4,893.59 *

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(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 3-1933 W. Markowitz or
F. J. SomonsTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>RT</i>			Jul 21 '33	4,893.59		
4,893.59 s	Jul 21 '33	1.00—			Jul 21 '33		Jul 21 '33	4,892.59 •
4,892.59	Jul 22 '33	69.00—	98.00—		Jul 22 '33		Jul 22 '33	4,725.59 •
4,725.59	Jul 22 '33	2.50—			Jul 22 '33	144.25	Jul 22 '33	4,867.34 •
4,867.34	Jul 22 '33	7.80—			Jul 22 '33		Jul 24 '33	4,859.54 •
4,859.54	Jul 24 '33	25.00—			Jul 24 '33		Jul 24 '33	4,834.54 •
4,834.54	Jul 24 '33	2.00—			Jul 24 '33		Jul 24 '33	4,832.54 •
4,832.54	Jul 25 '33	1.00—	35.00—	50.00—				
	Jul 25 '33	50.00—	30.00—	25.00—				
	Jul 25 '33	25.00—			Jul 25 '33		Jul 25 '33	4,616.54 •
4,616.54	Jul 25 '33	140.44—	185.00—	75.00—	Jul 25 '33	169.43	Jul 25 '33	4,385.53 •
4,385.53	Jul 26 '33	15.00—					Jul 26 '33	4,370.53 •
4,370.53	Jul 27 RT	22.50—	15.03—	140.00—				
	Jul 27 '33	37.50—			Jul 27 '33		Jul 27 '33	4,155.50 •
4,155.50					Jul 27 '33	180.00	Jul 27 '33	4,335.50 •
4,335.50	Jul 28 '33	1.03—	13.28—	132.00—				
	Jul 28 '33	7.75—	13.50—	4.50—				
	Jul 28 '33	.95—	14.17—	77.82—				
	Jul 28 '33	3.09—			Jul 28 '33		Jul 28 '33	4,067.41 •
4,067.41	Jul 28 '33	3.54—	3.10—	142.15—	Jul 28 '33		Jul 28 '33	3,918.62 •
3,918.62	Jul 29 '33	13.23—	2.50—	10.00—				
	Jul 29 '33	7.54—	6.59—	125.00—				
	Jul 29 '33	5.45—	1.35—		Jul 29 '33		Jul 29 '33	3,746.96 •
3,746.96	Jul 29 '33	3.75—			Jul 29 RT	22.50		
					Jul 29 '33	249.83	Jul 29 '33	4,015.54 •
4,015.54	Jul 29 '33	134.80—			Jul 29 '33		Jul 29 '33	3,880.74 •
3,880.74	Jul 31 '33	2.50—	4.50—	6.50—	Jul 31 '33		Jul 31 '33	3,867.24 •
3,867.24	Jul 31 '33	16.28—					Jul 31 '33	3,850.96 •
3,850.96	Jul 31 '33	55.00—			Jul 31 '33		Jul 31 '33	3,795.96 •
3,795.96	Aug 1 '33	2.12—			Aug 1 '33		Aug 1 '33	3,793.84 •
					{In pencil}: 15 2300			
3,793.84	Aug 1 '33	26.35—	24.00—	75.00—	Aug 1 '33		Aug 1 '33	3,667.49†•
	Aug 1 '33	1.00—			Aug 1 '33		Aug 1 '33	3,664.49†•
3,667.49	Aug 1 '33	25.00—	432.00—		Aug 1 '33			
3,210.49	Aug 1 '33	2,300.00—	25.00—	30.00—	Aug 1 '33	296.35		
	Aug 1 '33	55.00—					Aug 1 '33	1,096.84 •
1,096.84	Aug 2 '33	5.25—	50.00—		Aug 2 '33		Aug 2 '33	1,041.59 •
1,041.59	Aug 2 '33	150.00—			Aug 2 '33	539.17	Aug 2 '33	1,430.76 •
1,430.76	Aug 2 '33	25.00—			Aug 2 '33		Aug 2 '33	1,405.76 •
1,405.76	Aug 4 '33	150.00—					Aug 4 '33	1,255.76 •
1,255.76	Aug 4 '33	16.00—			Aug 4 '33	147.50	Aug 4 '33	1,387.26 •
1,387.26	Jan 5 '33	250.00—	105.00—		Jan 5 '33		Jan. 5 '33	1,032.26 •
	{In pencil}: RT							
1,322.26	Aug 6 '33	10.00—	98.00—				Aug 6 '33	1,214.26 •
1,214.26	Aug 7 '33	2.10—	10.00—	50.00—	Aug 7 '33	336.00	Aug 7 '33	1,518.16 •
					Aug 7 '33	30.00	Aug 7 '33	1,228.16 •

† Figures circled in pencil.

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(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 4-1933—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward 1.25			Aug 8 '33	1,228.16		
1,228.16 s	Aug 8 '33	25.00—	75.00—	42.50—				
	Aug 8 '33	10.00—	18.75—					
1,056.91					Aug 8 '33		Aug 8 '33	1,056.91 •
1,883.21	Aug 9 '33	25.00—	115.00—	10.00—	Aug 8 '33	826.30	Aug 8 '33	1,883.21 •
1,743.21	Aug 9 '33	10.00—	10.00—†		Aug 9 '33	10.00†	Aug 9 '33	1,743.21 •
1,723.31 v					Aug 9 '33	1,157.50	Aug 9 '33	1,723.21 •
							Aug 9 '33	2,880.81 •
2,880.71	Aug 11 '33	100.00—	50.00—	550.00—			Aug 9 '33	2,880.71 •
2,180.71	Aug 11 '33	10.00—	175.00—	61.37—	Aug 11 '33	130.00	Aug 11 '33	2,180.71 •
2,064.34	Aug 11 '33	50.00—					Aug 11 '33	2,064.34 •
2,014.34	Aug 12 '33	5.00—			Aug 12 '33	125.00	Aug 11 '33	2,014.34 •
2,134.34	Aug 14 '33	51.56—	106.84—	25.00—			Aug 12 '33	2,134.34 •
	Aug 14 '33	2.77—	8.00—	28.00—				
	Aug 14 '33	5.00—						
1,907.17	Aug 14 '33	12.50—	50.00—				Aug 14 '33	1,907.17 •
1,844.67	Aug 15 '33	23.20—	12.95—	6.71—			Aug 14 '33	1,844.67 •
	Aug 15 '33	78.00—	122.00—	12.50—				
	Aug 15 '33	6.33—	12.50—	9.25—				
	Aug 15 '33	75.00—	12.50—					
1,473.73	Aug 15 '33	25.00—	30.00—	55.00—	Aug 15 '33	73.00	Aug 15 '33	1,473.73 •
	Aug 15 '33	150.00—	55.00—	22.50—				
	Aug 15 '33	10.00—	25.00—					
1,174.23	Aug 16 '33	15.47—	100.00—	35.00—			Aug 15 '33	1,174.23 •
	Aug 16 '33	6.25—						
1,017.51	Aug 16 '33	12.25—	103.55—				Aug 16 '33	1,017.51 •
901.71	Aug 16 '33	83.50—					Aug 16 '33	901.71 •
818.21	Aug 17 '33	125.00—					Aug 16 '33	818.21 •
693.21					Aug 17 '33	314.71	Aug 17 '33	693.21 •
1,007.92	Aug 18 '33	1.02—	27.50—	20.00—			Aug 17 '33	1,007.92 •
959.40	Aug 18 '33	50.00—	50.00—				Aug 18 '33	959.40 •
859.40	Aug 19 '33	11.00—	98.00—				Aug 18 '33	859.40 •
750.40	Aug 19 '33	150.00—			Aug 19 '33	205.43	Aug 19 '33	750.40 •
805.83	Aug 21 '33	25.00—	25.00—	19.62—			Aug 19 '33	805.83 •
736.21					Aug 21 '33	296.43	Aug 21 '33	736.21 •
1,032.64	Aug 21 '33	50.00—	75.00—				Aug 21 '33	1,032.64 •
907.64	Aug 22 '33	119.06—	8.75—	75.00—			Aug 21 '33	907.64 •
	Aug 22 '33	25.00—						
679.83	Aug 23 '33	20.50—	63.75—		Aug 23 '33	317.28	Aug 22 '33	679.83 •
595.58	Aug 23 '33	50.00—					Aug 23 '33	595.58 •
862.86	Aug 24 '33	100.00—	1.50—	7.80—			Aug 23 '33	862.86 •
753.56	Aug 24 '33	50.00—			Aug 24 '33	192.00	Aug 24 '33	753.56 •
895.56	Aug 25 RT	10.03—	30.00—	40.00—			Aug 24 '33	895.56 •
							Aug 25 '33	815.53 •

† Figures circled in pencil.

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(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 4-1933		W Markowitz or F J Somers		THE SEABOARD NATIONAL BANK of Los Angeles					
Telephones: Residence No. Business No.		Name—The Atkins Cpororation Address—1126 Pacific Marine Natl Bldg.							
Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance	
815.53		Balance Brought Forward <i>815.53</i>			Aug 26 '33	815.53 s			
815.53 s									
780.53	Aug 26 '33	35.00—			Aug 26 '33	211.37	Aug 26 '33	815.53 s	
	Aug 26 '33	63.90—	75.00—	14.00—				780.53 *	
	Aug 26 '33	10.00—	65.00—	50.00—					
	Aug 26 '33	50.00—	75.00—	75.00—					
	Aug 26 '33	75.00—							
439.00	Aug 28 '33	100.00—	43.50—		[In pencil]: 1000 - 1 da		Aug 26 '33	439.00 *	
295.50	Aug 28 '33	65.00—	10.25—	25.00—			Aug 28 '33	295.50 *	
195.25	Aug 29 '33	9.00—	25.00—		Aug 29 '33	1,403.50†	Aug 28 '33	195.25 *	
1,564.75	Aug 30 '33	100.00—	25.00—	3.50—			Aug 29 '33	1,564.75† *	
	Aug 30 '33	25.00—	75.00—						
1,336.25					Aug 30 '33	150.00	Aug 30 '33	2,336.25† *	
1,486.25	Aug 31 '33	32.50—	55.00—	55.00—			Aug 30 '33	1,486.25 *	
	Aug 31 '33	62.50—	150.00—						
1,131.25					Aug 31 '33	224.41	Aug 31 '33	1,131.25 *	
1,355.66	Sep 1 CC	2.56—					Aug 31 '33	1,355.66 *	
1,353.10	Sep 1 '33	100.00—	50.00—	35.00—			Sep 1 '33	1,353.10 *	
	Sep 1 '33	2.60—							
1,165.50	Sep 1 RT	100.00—					Sep 1 '33	1,165.50 *	
1,065.50	Sep 2 '33	16.00—	100.00—	60.63—			Sep 1 '33	1,065.50 *	
	Sep 2 '33	100.00—	37.50—	56.00—	Sep 2 '33	432.89			
	Sep 2 '33	10.00—							
1,118.26	Sep 5 '33	49.00—	82.50—	100.00—			Sep 2 '33	1,118.26 *	
	Sep 5 '33	53.50—							
833.26	Sep 5 '33	50.00—	50.00—	50.00—			Sep 5 '33	833.26 *	
683.26	Sep 5 '33	125.00—	25.00—		Sep 5 '33	1,317.23	Sep 5 '33	683.26 *	
1,950.49	Sep 6 '33	75.00—	7.50—	51.91—	Sep 5 '33	100.00	Sep 5 '33	1,950.49 *	
	Sep 6 '33	150.00—	50.00—	2.60—			Sep 6 '33	1,613.48 *	
1,613.48	Sep 6 RT	37.50—					Sep 6 '33	1,613.48 *	
1,575.98	Sep 7 '33	49.00—	10.00—	6.05—			Sep 6 '33	1,575.98 *	
1,510.93	Sep 7 '33	13.50—	14.00—		Sep 7 '33	209.95	Sep 7 '33	1,510.93 *	
1,693.38	Sep 8 '33	25.00—					Sep 7 '33	1,693.38 *	
1,668.38	Sep 8 '33	50.00—					Sep 8 '33	1,668.38 *	
1,618.38	Sep 8 DM	2.00—					Sep 8 '33	1,618.38 *	
1,616.38	Sep 11 '33	10.00—	10.00—				Sep 8 '33	1,616.38 *	
1,596.38	Sep 11 '33	25.00—	50.00—	100.00—	Sep 11 '33	509.50	Sep 11 '33	1,596.38 *	
1,930.88	Sep 12 '33	75.00—	35.00—	100.00—			Sep 11 '33	1,930.88 *	
	Sep 12 '33	250.00—	50.00—						
1,420.88	Sep 13 '33	21.50—	50.00—	110.18—			Sep 12 '33	1,420.88 *	
	Sep 13 '33	60.00—	35.50—						
1,143.70	Sep 13 '33	10.00—			Sep 13 '33	265.50	Sep 13 '33	1,143.70 *	
1,399.20	Sep 14 '33	275.00—	50.00—	100.00—			Sep 13 '33	1,399.20 *	
974.20	Sep 15 '33	26.39—	7.50—	35.00—			Sep 14 '33	974.20 *	
	Sep 15 '33	98.00—							
807.31	Sep 15 '33	32.60—	55.00—	73.50—	Sep 15 '33	1,224.69	Sep 15 '33	807.31 *	
	Sep 15 '33	62.50—	150.00—						
1,658.40	Sep 16 '33	12.44—	.77—	150.00—			Sep 15 '33	1,658.40 *	
	Sep 16 '33	8.00—	16.05—	5.50—					
	Sep 16 '33	3.50—	32.50—	1.03—					
	Sep 16 '33	20.00—	.95—	5.00—			Sep 16 '33	1,402.66 s	

† Figures circled in pencil.

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(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 5-1933—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—Yhe Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>423</i>			Sep 16 '33	1,402.66 s		
1,402.66 s								
	Sep 16 '33	10.00—					Sep 16 '33	1,402.66 s
1,392.66	Sep 16 '33	40.46—	25.00—	50.00—	Sep 16 '33	95.00	Sep 16 '33	1,392.66 •
	Sep 16 '33	50.00—						
1,322.20	Sep 18 '33	2.85—	50.00—	30.00—			Sep 16 '33	1,322.20 •
	Sep 18 '33	8.50—	3.75—	30.00—				
	Sep 18 '33	11.26—	8.15—	13.70—				
	Sep 18 '33	2.70—	3.38—	2.46—				
	Sep 18 '33	79.60—	1.50—	12.35—				
	Sep 18 '33	2.04—	5.00—				Sep 18 '33	1,054.96 •
1,054.96	Sep 18 '33	50.00—					Sep 18 '33	1,004.96 •
1,004.96	Sep 19 '33	33.27—	50.00—	15.14—				
	Sep 19 '33	7.70—	15.00—	50.00—				
	Sep 19 '33	5.00—						
	Sep 19 '33	9.22—					Sep 19 '33	828.85 •
828.85	Sep 19 '33	91.00—			Sep 19 '33	287.00	Sep 19 '33	819.63 •
819.63	Sep 19 '33	91.00—					Sep 19 '33	1,015.63 •
1,015.63	Sep 20 '33	12.52—	75.00—	34.00—				
	Sep 20 '33	5.23—					Sep 20 '33	888.88 •
888.88	Sep 20 '33	25.00—					Sep 20 '33	863.88 •
863.88	Sep 20 '33	100.00—			Sep 20 '33	191.21	Sep 20 '33	955.09 •
955.09	Sep 21 '33	5.00—	11.50—	13.63—				
	Sep 21 '33	15.37—					Sep 21 '33	909.59 •
909.59	Sep 22 '33	30.00—	150.00—	50.00—			Sep 22 '33	679.59 •
679.59	Sep 23 RT	5.00—	12.50—	25.00—	Sep 23 '33	471.58		
	Sep 23 '33	5.00—	150.00—	50.00—				
	Sep 23 '33	50.00—	65.25—				Sep 23 '33	788.42 •
788.42	Sep 25 '33	43.00—	45.00—	15.00—				
	Sep 25 '33	32.50—					Sep 25 '33	652.92 •
652.92	Sep 25 '33	59.25—					Sep 25 '33	593.67 •
593.67	Sep 26 '33	149.30—	100.00—	50.00—			Sep 26 '33	294.37 •
294.37	Sep 26 '33	23.50—					Sep 26 '33	270.87 •
270.87	Sep 26 '33	50.00—			Sep 26 RT	5.00		
					Sep 26 '33	259.25	Sep 26 '33	485.12 •
485.12	Sep 28 '33	114.00—	88.00—				Sep 28 '33	283.12 •
283.12	Sep 28 '33	100.00—			Sep 28 '33	215.74	Sep 28 '33	398.86 •
398.86	Sep 29 RT	5.00—					Sep 28 '33	398.86 •
393.86	Sep 29 '33	60.00—	55.00—	62.50—	Sep 29 '33	200.00	Sep 29 '33	393.86 •
	Sep 29 '33	10.00—	25.00—	150.00—				
	Sep 29 '33	32.50—					Sep 29 '33 U-V†	198.86 •
198.86	Sep 30 '33	100.00—					Sep 30 '33 59.04†	98.86 •
98.86	Sep 30 '33	50.00—					Sep 30 '33	48.86 •
48.86	Oct 2 CC	2.96—	1.02—				Oct 2 '33	44.88 •
44.88	Oct 2 '33	31.00—	100.00—	59.00—	Oct 2 '33	845.50		
	Oct 2 '33	29.53—					Oct 2 '33	670.85 •
670.85	Oct 3 '33	53.25—	50.00—				Oct 3 '33	567.60 •
567.60	Oct 3 '33	100.00—					Oct 3 '33	467.60 •
467.60	4 '33	98.00—					4 '33	369.80 •

† In pencil.

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 5-1933

W. Markowitz or
F J SomersTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail Balance Brought Forward <i>AT</i>			Date	Deposits	Date	New Balance
369.60					Oct 4 '33	369.60 s		
369.60 s								
	Oct 4 '33	35.00—	120.00—	100.00—	Oct 4 '33	240.50	Oct 4 '33	369.60 s
355.10	Oct 5 '33	100.00—	18.83—				Oct 4 '33	355.10 *
236.27	Oct 6 '33	16.00—	10.00—				Oct 5 '33	236.27 *
210.27							Oct 6 '33	210.27 *
404.26	Oct 7 '33	43.75—			Oct 6 '33	193.99	Oct 6 '33	404.26 *
360.51	Oct 7 '33	25.00—	60.00—	100.00—	[In pencil]: 1 da		Oct 7 '33	360.51 *
	Oct 7 '33	50.00—			Oct 7 '33	1,000.00†		
1,125.51	Oct 9 '33	3.00—					Oct 7 '33	1,125.51†*
1,122.51	Oct 9 '33	41.41—	200.00—	25.00—			Oct 9 '33	1,122.51 *
1,134.61	Oct 10 '33	100.00—			Oct 9 '33	278.51	Oct 9 '33	1,134.61 *
1,034.61	Oct 11 '33	50.00—	100.00—		[In pencil]: 18.00—1 da		Oct 10 '33	1,034.61 *
884.61	Oct 11 '33	35.00—	117.30—		Oct 11 '33	2,310.44†	Oct 11 '33	884.61 *
3,042.75	Oct 13 '33	64.30—	2.82—	5.00—			Oct 11 '33	3,042.75†*
	Oct 13 '33	32.70—	22.32—					
2,915.61	Oct 13 '33	30.26—			Oct 13 '33	1,177.39	Oct 13 '33	2,915.61†*
4,062.74	Oct 14 '33	39.79—	38.84—	14.56—			Oct 13 '33	4,062.74 *
	Oct 14 '33	53.37—	14.25—	7.61—				
	Oct 14 '33	1.35—	9.75—	8.70—				
	Oct 14 '33	.82—	8.18—	18.64—				
	Oct 14 '33	15.27—	5.00—	10.00—				
	Oct 14 '33	5.07—	150.00—				Oct 14 '33	3,661.54 *
3,661.54	Oct 14 '33	200.00—	100.00—	73.59—				
	Oct 14 '33	21.06—					Oct 14 '33	3,266.89 *
3,266.89	Oct 14 '33	150.00—	62.50—	60.00—				
	Oct 14 '33	55.00—	32.50—	25.00—				
	Oct 14 '33	50.00—	50.00—				Oct 14 '33	2,781.89 *
2,781.89	Oct 16 '33	100.00—	5.50—	500.00—			Oct 16 '33	2,776.39 *
2,176.39	Oct 16 '33	22.40—			Oct 16 '33	1,026.85	Oct 16 '33	3,180.84 *
3,180.84	Oct 17 '33	35.00—	98.00—	100.00—				
	Oct 17 '33	5.00—	160.00—	5.20—				
	Oct 17 '33	26.25—					Oct 17 '33	2,751.39 *
2,751.39	Oct 17 '33	100.00—	87.50—		Oct 17 '33	287.00	Oct 17 '33	2,850.89 *
2,850.89	Oct 18 '33	11.50—	1,000.00—	275.00—				
	Oct 18 '33	19.96—	30.00—	16.35—				
	Oct 18 '33	4.45—					Oct 18 '33	1,493.63 *
1,493.63	Oct 18 RT	94.25—					Oct 18 '33	1,399.38 *
1,399.38	Oct 19 '33	2.50—	20.00—	5.40—				
	Oct 19 '33	30.00—	44.00—	10.00—			Oct 19 '33	1,287.48 *
1,287.48	Oct 19 '33	100.00—	50.00—		Oct 19 '33	285.10	Oct 19 '33	1,422.58 *
1,422.58	Oct 20 '33	35.00—	17.50—				Oct 20 '33	1,370.08 *
1,370.08					Oct 20 '33	143.85	Oct 20 '33	1,513.93 *
1,513.93	Oct 20 '33	100.00—					Oct 20 '33	1,413.93 *
963.93	Oct 21 RT	25.00—	75.00—	50.00—			Oct 21 '33	963.93 *
813.93	Oct 23 '33	11.10—	1.25—				Oct 21 '33	813.93 *
1,413.93	Oct 21 '33	50.00—	400.00—				Oct 23 '33	801.58 *
801.58	Oct 23 '33	25.00—			Oct 23 '33	173.78	Oct 23 '33	776.58 *
776.58					Oct 23 RT	25.00	Oct 23 '33	975.36 *

† Figures circled in pencil.

1900-1901

1901-1902

1902-1903

1903-1904

1904-1905

1905-1906

1906-1907

1907-1908

1908-1909

1909-1910

1910-1911

1911-1912

1912-1913

1913-1914

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 6-1933—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No. _____
Business No. _____Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>423</i>						
975.36 s							Oct 24 '33	975.36 s
975.36	Oct 24 '33	100.00—	133.66—	18.00—				
	Oct 24 '33	20.00—					Oct 24 '33	703.70 •
703.70	Oct 25 '33	10.00—					Oct 25 '33	693.70 •
693.70	Oct 25 '33	100.00—	20.00—		Oct 25 '33	296.00	Oct 25 '33	869.70 •
869.70	Oct 26 '33	50.00—					Oct 26 '33	819.70 •
819.70	Oct 26 '33	11.50—	11.50—				Oct 26 '33	796.70 •
796.70	Oct 26 RT	25.00—					Oct 26 '33	771.70 •
771.70	Oct 27 '33	140.00—	10.00—	43.00—			Oct 27 '33	578.70 •
578.70					Oct 27 '33	261.81	Oct 27 '33	840.51 •
840.51	Oct 27 '33	38.50—					Oct 27 '33	802.01 •
802.01	Oct 28 '33	50.00—	50.00—				Oct 28 '33	702.01 •
702.01	Oct 30 '33	10.00—	98.00—				Oct 30 '33	594.01 •
594.01	Oct 30 '33	100.00—	1.00—	214.00—			Oct 30 '33	279.01 •
279.01	Oct 30 '33	25.00—					Oct 30 '33	254.01 •
254.01	Oct 31 '33	12.71—					Oct 31 '33	241.30 •
241.30	Oct 31 '33	3.00—	2.00—	13.50—			Oct 31 '33	222.80 •
222.80	Nov 1 CC	2.58—					Nov 1 '33	220.22 •
220.22	Nov 1 '33	150.00—	60.00—	62.50—	Nov 1 '33	1,198.00		
	Nov 1 '33	16.00—	32.50—	55.00—				
	Nov 1 '33	16.96—					Nov 1 '33	1,025.26 •
1,025.26	Nov 2 '33	100.00—	25.00—	2.60—				
	Nov 2 '33	5.40—					Nov 2 '33	892.26 •
892.26	Nov 3 '33	100.00—	2.29—				Nov 3 '33	789.97 •
789.97					Nov 4 '33	563.32	Nov 4 '33	1,353.29 •
1,353.29	Nov 6 '33	25.00—					Nov 6 '33	1,328.29 •
1,328.29	Nov 7 '33	100.00—	26.25—				Nov 7 '33	1,202.04 •
1,202.04	Nov 7 '33	7.70—					Nov 7 '33	1,194.34 •
1,194.34	Nov 7 '33	26.25—					Nov 7 '33	1,168.09 •
1,168.09					Nov 7 '33	122.03	Nov 7 '33	1,290.12 •
1,290.12	Nov 8 '33	6.99—	25.00—				Nov 8 '33	1,258.13 •
1,258.13	Nov 9 '33	78.00—	3.00—				Nov 9 '33	1,177.13 •
1,177.13	Nov 9 '33	25.00—			Nov 9 '33	[Illegible]	Nov 9 '33	1,152.13 •
1,152.13					Nov 9 '33	765.56	Nov 9 '33	1,917.69 •
1,917.69	Nov 10 '33	25.00—					Nov 10 '33	1,892.69 •
1,892.69	Nov 10 '33	100.00—	5.40—				Nov 10 '33	1,787.29 •
1,787.29	Nov 13 '33	50.00—					Nov 13 '33	1,737.29 •
1,737.29	Nov 13 '33	48.52—					Nov 13 '33	1,688.77 •
1,688.77	Nov 13 '33	7.85—	10.00—				Nov 13 '33	1,670.92 •
1,670.92					Nov 13 '33	140.00	Nov 13 '33	1,810.92 •
1,810.92	Nov 14 '33	137.00—	98.00—	25.00—				
	Nov 14 '33	32.26—					Nov 14 '33	1,518.66 •
1,518.66	Nov 14 '33	2.75—					Nov 14 '33	1,515.91 •
1,515.91					Nov 14 '33	519.40	Nov 14 '33	2,035.31 •
2,035.31	Nov 15 '33	4.12—	37.00—				Nov 15 '33	1,994.19 •
1,994.19	Nov 15 '33	55.90—	150.00—	62.50—	Nov 15 '33	201.59	Nov 15 '33	1,928.28 •
1,928.28	Nov 16 '33	16.48—	4.07—	5.00—				
	Nov 16 '33	2.81—	1.50—	7.47—				
	Nov 16 '33	6.80—	107.15—	65.00—				
	Nov 16 '33	9.10—	5.00—	15.17—			Nov 16 '33	1,682.73 •

1914. 1915.

1916. 1917. 1918.

1919. 1920. 1921.

1922. 1923. 1924.

1925. 1926. 1927.

1928. 1929. 1930.

1931. 1932. 1933.

1934. 1935. 1936.

1937. 1938. 1939.

1940. 1941. 1942.

1943. 1944. 1945.

1946. 1947. 1948.

1949. 1950. 1951.

1952. 1953. 1954.

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 6- 933 W. Markowitz or
F J SomersTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Coporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward 427						
1,682.73	Nov 16 '33	40.00—						
1,642.73								
1,959.58	Nov 17 '33	8.97—	30.00—	14.33—	Nov 16 '33	316.85	Nov 16 '33	1,642.73 *
	Nov 17 '33	10.70—	5.59—	6.09—			Nov 16 '33	1,959.58 *
	Nov 17 '33	17.10—						
1,866.80	Nov 17 '33	25.31—					Nov 17 '33	1,866.80 *
1,841.49	Nov 18 '33	22.10—	3.61—	5.00—			Nov 17 '33	1,841.49 *
	Nov 18 '33	64.30—						
1,746.48	Nov 18 '33	4.60—						
1,898.41	Nov 20 '33	129.90—	13.10—	100.00—	Nov 18 '33	156.53	Nov 18 '33	1,746.48 *
1,655.41	Nov 20 '33	50.00—	10.00—	120.52—			Nov 18 '33	1,898.41 *
1,474.88	Nov 20 '33	25.27—		2	✓		Nov 20 '33	1,655.41 *
1,601.88	Nov 20 '33	120.52—			Nov 20 '33	152.27	Nov 20 '33	1,474.88 *
1,601.89	Nov 21 '33	46.00—	8.58—	51.75—	Nov 20 '33	120.53†	Nov 20 '33	1,601.88 *
	Nov 21 '33	232.50—	75.95—	75.00—				1,601.89 *
	Nov 21 '33	10.00—						
1,102.11	Nov 21 '33	135.00—	37.00—				Nov 21 '33 U.V.†	1,102.11 *
930.11	Nov 21 '33	75.00—					Nov 21 '33 45.00†	930.11 *
1,008.14	Nov 22 '33	43.00—	22.75—	20.00—	Nov 21 '33	153.03	Nov 21 '33	1,008.14 *
922.39	Nov 22 '33	45.00—	12.00—	550.00—			Nov 22 '33	922.39 *
315.39							Nov 22 '33	315.39 *
1,488.45	Nov 23 '33	284.00—			Nov 22 '33	1,173.06	Nov 22 '33	1,488.45 *
1,204.45	Nov 23 '33	50.00—					Nov 23 '33	1,204.45 *
1,368.60	Nov 24 '33	20.00—			Nov 23 '33	214.15	Nov 23 '33	1,368.60 *
1,348.60	Nov 25 '33	100.00—					Nov 24 '33	1,348.60 *
1,380.92	Nov 27 '33	122.00—			Nov 25 '33	132.32	Nov 25 '33	1,380.92 *
1,258.92	Nov 28 '33	98.00—					Nov 27 '33	1,258.92 *
1,160.92	Nov 28 '33	5.00—					Nov 28 '33	1,160.92 *
1,155.92	Nov 29 '33	9.10—	200.00—	13.50—			Nov 28 '33	1,155.92 *
933.32							Nov 29 '33	933.32 *
1,192.67	Dec 1 '33	15.28—	19.43—		Nov 29 '33	259.35	Nov 29 '33	1,192.67 *
1,157.96	Dec 1 '33	126.75—					Dec 1 '33	1,157.96 *
1,131.21					Dec 1 '33	26.75†	Dec 1 '33	1,131.21 *
1,157.96	Dec 2 '33	38.49—	50.00—	62.50—			Dec 1 '33	1,157.96 *
	Dec 2 '33	150.00—	55.00—					
802.97	Dec 2 '33	53.10—	16.00—	75.00—	Dec 2 '33	313.83	Dec 2 '33	802.97 *
972.70	Dec 4 CC	1.98—					Dec 2 '33	972.70 *
970.72	Dec 4 '33	10.00—	13.60—				Dec 4 '33	970.72 *
947.12	Dec 4 '33	12.50—					Dec 4 '33	947.12 *
934.62	Dec 5 '33	50.00—	120.00—				Dec 4 '33	934.62 *
764.62							Dec 5 '33	764.62 *
988.76	Dec 6 '33	4.25—			Dec 5 '33	224.14	Dec 5 '33	988.76 *
984.51	Dec 6 RT	20.00—					Dec 5 '33	988.76 *
964.51	Dec 7 '33	25.00—	10.00—	117.75—			Dec 6 '33	984.51 *
811.76	Dec 7 '33	25.00—	1,500.00—		Dec 7 RT 700 - 1 da†	20.00	Dec 6 '33	964.51 *
					Dec 7 '33	1,700.00†	Dec 7 '33	811.76 *
					Dec 7 '33	339.96		
1,346.72	Dec 7 '33	60.00—					Dec 7 '33	1,346.72† *
1,286.72	Dec 8 '33	15.00—	14.50—	10.00—			Dec 7 '33	1,286.72† *
	Dec 8 '33	5.00—						
1,242.22	Dec 9 '33	75.00—					Dec 8 '33	1,242.22 *
							Dec 9 '33	1,167.22† *

† Figures circled in pencil.

† Notation in pencil.

1. 10. 1910

1. 10. 1910

1. 10. 1910

1. 10. 1910

1. 10. 1910

1. 10. 1910

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1. 10. 1910

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 7-1933—over

THE SEABOARD NATIONAL BANK
of Los Angeles

Telephones: Residence No. _____
Business No. _____

Name—The Atkins Corporation
Address—1126 Pacific Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward <i>AB</i>						
1,167.22	Dec 9 '33	24.50—			Dec 9 '33	99.70	Dec 9 '33	1,242.42 •
1,242.42	Dec 11 '33	20.00—					Dec 11 '33	1,222.42 •
1,222.42	Dec 12 '33	25.00—	5.00—				Dec 12 '33	1,192.42 •
1,192.42	Dec 12 '33	50.00—			Dec 12 '33	277.50	Dec 12 '33	1,419.92 •
1,419.92	Dec 13 '33	2.00—					Dec 13 '33	1,417.92 •
1,417.92	Dec 13 '33	75.00—					Dec 13 '33	1,342.92 •
1,342.92					Dec 13 '33	291.19	Dec 13 '33	1,634.11 •
1,634.11	Dec 14 '33	2.60—	3.06—	15.30—				
	Dec 14 '33	150.00—					Dec 14 '33	1,463.15 •
1,463.15	Dec 14 '33	93.02—					Dec 14 '33	1,370.13 •
1,370.13	Dec 15 '33	98.00—					Dec 15 '33	1,272.13 •
1,272.13	Dec 15 '33	40.08—					Dec 15 '33	1,232.05 •
1,232.05	Dec 15 '33	20.00—					Dec 15 '33	1,212.05 •
1,212.05					Dec 15 '33	500.00	Dec 15 '33	1,712.05 •
1,712.05	Dec 16 '33	50.00—	27.50—	62.50—	Dec 16 '33	181.13	Dec 16 '33	1,753.18 •
1,753.18					Dec 18 '33	177.50	Dec 18 '33	1,930.68 •
1,930.68	Dec 20 '33	140.00—	30.00—	35.00—			Dec 20 '33	1,725.68 •
1,725.68	Dec 20 '33	613.95—	50.00—	150.00—			Dec 20 '33	911.73 •
911.73	Dec 20 '33	50.00—	50.00—				Dec 20 '33	811.73 •
811.73					Dec 20 '33	612.38	Dec 20 '33	1,424.11 •
1,424.11					Dec 21 '33	176.97	Dec 21 '33	1,601.08 •
1,601.08	Dec 21 '33	50.00—					Dec 21 '33	1,551.08 •
1,551.08	Dec 22 '33	30.49—					Dec 22 '33	1,520.59 •
1,520.59	Dec 22 RT	110.00—					Dec 22 '33	1,410.59 •
1,410.59					Dec 22 '33	643.93	Dec 22 '33	2,054.52 •
2,054.52	Dec 23 '33	19.00—					Dec 23 '33	2,035.52 •
2,035.52	Dec 23 '33	75.00—	50.00—	275.00—	Dec 23 '33	84.60	Dec 23 '33	1,720.12 •
1,720.12	Dec 26 '33	65.00—	98.00—				Dec 26 '33	1,557.12 •
1,557.12	Dec 27 '33	1.55—	3.85—	22.50—				
	Dec 27 '33	5.25—					Dec 27 '33	1,523.97 •
1,523.97	Dec 27 '33	100.00—	12.50—				Dec 27 '33	1,411.47 •
1,411.47	Dec 28 '33	3.56—	72.75—	25.00—				
	Dec 28 '33	2.70—	92.72—	5.50—				
	Dec 28 '33	36.75—	9.23—	18.76—			Dec 28 '33	1,344.50 •
1,344.50	Dec 28 '33	34.00—					Dec 28 '33	1,310.50 •
1,310.50					Dec 28 '33	161.27	Dec 28 '33	1,271.77 •
1,271.77	Dec 29 '33	8.10—	15.03—	5.32—			Dec 29 '33	1,243.32 •
1,243.32	Dec 29 '33	24.73—					Dec 29 '33	1,218.59 •
1,218.59	Dec 30 '33	18.75—					Dec 30 '33	1,199.84 •
1,199.84	Dec 30 '33	17.00—	2.60—	32.50—	Dec 30 '33	66.30		
	Dec 30 '33	50.00—	100.00—				Dec 30 '33	1,064.04 •
1,064.04	Jan 2 '34	1.66—					Jan 2 '34	1,062.38 •
1,062.38	Jan 2 '34	200.00—	52.75—				Jan 2 '34	809.63 •
809.63	Jan 3 '34	120.33—	11.60—				Jan 3 '34	677.70 •
677.70					Jan 3 '34	181.81	Jan 3 '34	859.51 •

1. $\frac{1}{2} \log 2$

2. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

3. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

4. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$ (the same as 3, but with a different order of terms)

5. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

6. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

7. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

8. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

9. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

10. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

11. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

12. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

13. $\frac{1}{2} \log 2$ and $\frac{1}{2} \log 2$

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 7-1933 W. Markowitz or
F J SomersTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward						
859.51	Jan 4 '34	12.00—	20.00—	10.07—			Jan 4 '34	817.44 *
817.44	Jan 4 '34	14.93—	16.00—		Jan 4 '34	767.69	Jan 4 '34	1,554.20 *
1,554.20	Jan 5 RT	10.00—	50.00—				Jan 5 '34	1,494.20 *
1,494.20	Jan 6 '34	100.00—	100.00—		Jan 6 '34	210.00	Jan 6 '34	1,504.20 *
1,504.20	Jan 8 '34	145.00—	10.00—	73.25—				
	Jan 8 '34	98.00—	16.80—				Jan 8 '34	1,161.15 *
1,161.15	Jan 8 '34	15.00—			Jan 8 '34	590.00	Jan 8 '34	1,736.15 *
1,736.15	Jan 9 '34	25.00—	52.50—				Jan 9 '34	1,658.65 *
1,658.65	Jan 11 '34	10.00—	200.00—				Jan 11 '34	1,448.65 *
1,448.65	Jan 11 '34	30.00—	100.00—		Jan 11 '34	118.25	Jan 11 '34	1,436.90 *
1,436.90	Jan 12 '34	20.00—					Jan 12 '34	1,416.90 *
1,416.90	Jan 13 '34	73.00—					Jan 13 '34	1,343.90 *
1,343.90	Jan 13 '34	75.00—	9.00—	16.61—	Jan 13 '34	207.50	Jan 13 '34	1,450.79 *
1,450.79	Jan 15 '34	10.00—	41.05—	30.00—			Jan 15 '34	1,369.74 *
1,369.74	Jan 15 '34	100.00—	50.00—	32.50—	Jan 15 '34	164.84		
	Jan 15 '34	11.50—					Jan 15 '34	1,340.58 *
1,340.58	Jan 16 '34	14.00—	20.00—	125.00—			Jan 16 '34	1,181.58 *
1,181.58	Jan 16 RT	10.00—					Jan 16 '34	1,171.58 *
1,171.58					Jan 16 '34	641.53	Jan 16 '34	1,813.11 *
1,813.11	Jan 17 '34	15.00—					Jan 17 '34	1,798.11 *
1,798.11	Jan 18 '34	50.00—	145.00—	30.00—	Jan 19 '34	528.46	Jan 18 '34	1,573.11 *
1,573.11							Jan 19 '34	2,101.57 *
2,101.57	Jan 20 '34	14.50—	21.67—	140.00—	Jan 20 '34	371.76	Jan 20 '34	1,925.40 *
1,925.40	Jan 20 '34	611.32—					Jan 20 '34	1,685.84 *
1,685.84	Jan 22 '34	6.30—	5.25—	20.00—			Jan 22 '34	1,508.78 *
	Jan 22 '34	43.44—	98.00—	4.07—			Jan 22 '34	1,495.18 *
1,508.78	Jan 22 '34	13.60—						
1,495.18	Jan 23 '34	4.89—	4.64—	50.00—				
	Jan 23 '34	20.00—	85.00—	50.00—				
	Jan 23 '34	5.00—	5.50—	35.93—				
	Jan 23 '34	5.00—	35.83—				Jan 23 '34	1,193.39 *
1,193.39	Jan 23 '34	10.00—			Jan 23 '34	134.42	Jan 23 '34	1,317.81 *
1,317.81	Jan 23 DM	114.58—					Jan 23 '34	1,203.23 *
1,203.23	Jan 24 '34	10.00—	31.21—	12.34—				
	Jan 24 '34	6.25—	103.36—	28.08—				
	Jan 24 '34	24.00—					Jan 24 '34	987.99 *
987.99	Jan 25 '34	176.20—					Jan 25 '34	811.79 *
811.79					Jan 25 '34	160.00	Jan 25 '34	971.79 *
971.79	Jan 26 '34	2.30—					Jan 26 '34	969.49 *
969.49	Jan 27 '34	13.56—					Jan 27 '34	955.93 *
955.93	Jan 27 '34	60.00—					Jan 27 '34	895.93 *
895.93	Jan 29 '34	70.00—					Jan 29 '34	825.93 *
825.93	Jan 29 '34	70.00—			Jan 29 '34	255.63	Jan 29 '34	1,011.56 *
1,011.56	Jan 30 '34	2.50—					Jan 30 '34	1,009.06 *
1,009.06	Jan 31 '34	1.00—					Jan 31 '34	1,008.06 *
1,008.06	Jan 31 '34	11.00—	32.50—	100.00—	Jan 31 '34	108.85	Jan 31 '34	773.41 *
973.41	Feb 1 CC	1.70—	50.00—	1.00—			Feb 1 '34	920.71 *
920.71	Feb 1 '34	52.58—	50.00—	84.77—			Feb 1 '34	733.36 *
733.36	Feb 2 '34	37.88—	2.93—		Feb 2 '34	625.00	Feb 2 '34	692.55 *
692.55							Feb 2 '34	1,317.55 *
1,317.55	Feb 2 '34	16.00—	100.00—	40.00—				
	Feb 2 '34	100.00—					Feb 2 '34	1,061.55 *

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 8-1934—over

THE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward 4.23						
1,061.55	Feb 3 '34	125.00—	5.00—	50.00—			Feb 3 '34	881.55 *
881.55	Feb 5 '34	12.75—	11.17—	98.00—				
	Feb 5 '34	72.34—					Feb 5 '34	687.29 *
687.29	Feb 5 '34	50.00—					Feb 5 '34	637.29 *
637.29	Feb 5 '34	27.59—			Feb 5 '34	10.00		
					Feb 5 '34	199.30	Feb 5 '34	819.00 *
819.00	Feb 6 '34	25.00—	15.48—	100.00—				
	Feb 6 '34	50.00—	100.00—	35.00—			Feb 6 '34	493.52 *
493.52	Feb 6 '34	10.00—					Feb 6 '34	483.52 *
483.52	Feb 7 '34	120.90—	20.00—	1.50—			Feb 7 '34	341.12 *
341.12	Feb 7 '34	63.52—			[In pencil]: 500 - 1 da		Feb 7 '34	277.60 *
277.60	Feb 8 '34	.75—	20.00—		[In pencil]: 500 - 6 "		Feb 8 '34	256.85 *
256.85	Feb 8 '34	200.00—					Feb 8 '34	56.85 *
56.85					Feb 8 '34	1,138.58†	Feb 8 '34	1,195.43†
1,195.43	Feb 9 '34	75.00—	3.00—				Feb 9 '34	1,117.43†
1,117.43	Feb 10 '34	11.00—	19.75—				Feb 10 '34	1,086.68†
1,086.68	Feb 13 '34	10.00—			Feb 13 '34	199.21	Feb 13 '34	1,275.89 *
1,275.89	Feb 14 '34	100.00—	10.00—	70.42—			Feb 14 '34	1,095.47 *
1,095.47					Feb 14 '34	1,057.86	Feb 14 '34	2,153.33 *
2,153.33	Feb 15 '34	25.00—					Feb 15 '34	2,128.33 *
2,128.33	Feb 15 '34	100.00—	32.50—	50.00—	Feb 15 '34	151.80	Feb 15 '34	2,097.63 *
2,097.63	Feb 16 '34	20.00—	10.00—	9.74—				
	Feb 16 '34	7.00—	19.92—	10.00—				
	Feb 16 '34	3.00—	100.00—				Feb 16 '34	1,917.97 *
1,917.97	Feb 17 '34	.75—	70.70—	33.62—				
	Feb 17 '34	20.00—	5.00—	5.00—	Feb 17 '34	286.10	Feb 17 '34	1,782.90 *
1,782.90							Feb 17 '34	2,069.00 *
2,069.00	Feb 17 '34	10.00—					Feb 17 '34	2,059.00 *
2,059.00	Feb 19 '34	2.21—	28.63—	.50—				
	Feb 19 '34	98.00—	19.04—	1.00—			Feb 19 '34	1,909.62 *
1,909.62	Feb 19 '34	5.00—	13.21—				Feb 19 '34	1,891.41 *
1,891.41	Feb 20 '34	6.00—	22.00—	11.49—				
	Feb 20 '34	38.44—	78.41—	9.22—			Feb 20 '34	1,725.85 *
1,725.85	Feb 20 '34	35.84—	1.05—				Feb 20 '34	1,688.96 *
1,688.96	Feb 20 RT	15.00—			Feb 20 '34	115.50	Feb 20 '34	1,789.46 *
1,789.46	Feb 21 '34	38.13—	2.70—	12.00—				
	Feb 21 '34	50.00—					Feb 21 '34	1,686.63 *
1,686.63	Feb 21 '34	75.00—					Feb 21 '34	1,611.63 *
1,611.63	Feb 23 '34	50.00—					Feb 23 '34	1,561.63 *
1,561.63	Feb 24 '34	2.50—	7.18—	24.00—				
	Feb 24 '34	10.00—	14.68—	3.59—			Feb 24 '34	1,499.68 *
1,499.68	Feb 24 '34	150.00—			Feb 24 '34	360.26	Feb 24 '34	1,709.94 *
1,709.94	Feb 26 '34	4.50—	122.00—	66.46—			Feb 26 '34	1,516.98 *
1,516.98	Feb 27 '34	4.50—					Feb 27 '34	1,512.48 *

† Figures circled in pencil.

1. *Pharmaceutical industry* – The pharmaceutical industry is a major player in the healthcare sector, responsible for the development, production, and distribution of drugs. It is a highly regulated industry with significant research and development costs.

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 8-1934 W. J. Markowitz or
F. J. SomersTHE SEABOARD NATIONAL BANK
of Los AngelesTelephones: Residence No.
Business No.Name—The Atkins Corporation
Address—1126 Pacific Natl Bldg.

Old Balance	Date	Checks in Detail Balance Brought Forward 125			Date	Deposits	Date	New Balance
1,512.48	Feb 27 '34	15.00—			Feb 27 RT	15.00		
					Feb 27 '34	104.10	Feb 27 '34	1,616.58 *
1,616.58	Feb 28 '34	70.40—	275.00—	131.35—			Feb 28 '34	1,139.83 *
1,139.83	Feb 28 '34	80.00—					Feb 28 '34	1,059.83 *
1,059.83	Mar 1 CC	1.98—					Mar 1 '34	1,057.85 *
1,057.85	Mar 1 '34	538.30—					Mar 1 '34	519.55 *
519.55	Mar 1 '34	32.50—	100.00—	50.00—	Mar 1 '34	612.50†		
					Mar 1 '34	1,599.05†	Mar 1 '34	2,548.60 *
2,548.60	Mar 1 '34	1,599.05—†			Mar 1 '34	1,099.05	Mar 1 '34	2,048.60 *
					[Notation illegible]			
2,048.60	Mar 1 '34	612.50—†			Mar 1 '34	712.50	Mar 1 '34	2,148.60† *
2,148.60	Mar 2 '34	16.19—	25.00—	5.72—				
	Mar 2 '34	50.00—					Mar 2 '34	2,051.69 *
2,051.69	Mar 2 '34	16.00—			Mar 2 '34	520.54	Mar 2 '34	2,556.23 *
2,556.23	Mar 3 '34	20.07—	50.00—				Mar 3 '34	2,486.16 *
2,486.16	Mar 5 '34	75.00—	206.77—	52.18—			Mar 5 '34	2,152.21 *
2,152.21	Mar 6 '34	50.00—	20.00—	25.00—				
	Mar 6 '34	98.00—	50.00—				Mar 6 '34	1,909.21 *
1,909.21	Mar 6 '34	50.00—			Mar 6 '34	512.89	Mar 6 '34	2,372.10 *
2,372.10	Mar 6 '34	10.00—					Mar 6 '34	2,362.10 *
2,362.10	Mar 7 '34	86.40—					Mar 7 '34	2,275.70 *
2,275.70	Mar 8 '34	100.00—	54.67—				Mar 8 '34	2,121.03 *
2,121.03	Mar 8 '34	10.00—					Mar 8 '34	2,111.03 *
2,111.03	Mar 9 '34	120.00—	140.00—				Mar 9 '34	1,851.03 *
1,851.03	Mar 9 '34	18.26—†√			Mar 9 '34	18.26†	Mar 9 '34	1,832.77 *
1,832.77							Mar 9 '34	1,851.03 *
1,851.03	Mar 10 '34	4.65—			Mar 10 '34	356.45	Mar 10 '34	1,846.38 *
1,846.38	Mar 10 '34	27.38—	250.00—	100.00—				
	Mar 10 '34	25.00—					Mar 10 '34	1,800.45 *
1,800.45	Mar 12 '34	25.00—	75.00—	35.00—				
	Mar 12 '34	1.03—					Mar 12 '34	1,664.42 *
1,664.42	Mar 12 '34	5.00—	15.00—	200.00—	Mar 12 '34	915.00	Mar 12 '34	1,444.42 *
1,444.42							Mar 12 '34	2,359.42 *
2,359.42	Mar 13 '34	4.88—	25.00—				Mar 14 '34	2,701.46 *
2,329.54	Mar 13 '34	50.00—					Mar 13 '34	2,279.54 *
2,279.54					Mar 13 '34	598.32	Mar 13 '34	2,877.86 *
2,877.86	Mar 14 '34	86.40—					Mar 14 '34	2,701.46 *
2,791.46	Mar 15 '34	100.00—	32.50—	50.00—			Mar 15 '34	2,608.96 *
2,608.96	Mar 16 '34	10.96—					Mar 16 '34	2,598.00 *
2,598.00					Mar 17 '34	386.60	Mar 17 '34	2,984.60 *
2,984.60	Mar 19 '34	13.93—					Mar 19 '34	2,970.67 *
2,970.67					Mar 20 '34	378.14	Mar 20 '34	3,348.81 *
3,348.81	Mar 21 '34	62.50—					Mar 21 '34	3,286.31 *
3,286.31					Mar 22 '34	132.66	Mar 22 '34	3,418.97 *

† Figures circled in pencil.

(Testimony of Winthrop L. Brown.)

Plaintiff's Exhibit No. 183—(Continued)

Sheet No. 8. 9-1934—over

THE SEABOARD NATIONAL BANK
of Los Angeles

Account Analysis

					Name—The Atkins Corporation Address—1126 Pacific Natl Bldg.			
Old Balance	Date	Checks in Detail Balance Brought Forward 1.27			Date	Deposits	Date	New Balance
3,418.97	Mar 24 '34	98.00—	20.00—	6.25—				
	Mar 24 '34	301.60—	31.40—	29.79—			Mar 24 '34	2,931.93 *
2,931.93	Mar 24 '34	150.00—	606.07—				Mar 24 '34	2,175.86 *
2,175.86	Mar 26 '34	47.50—	43.00—				Mar 26 '34	2,085.36 *
2,085.36	Mar 26 '34	100.00—	50.00—	40.02—	[In pencil]: 1 da			
	Mar 26 '34	23.34—					Mar 26 '34	1,872.00 *
1,872.00	Mar 26 '34	57.00—			Mar 26 '34	20,000.00†	Mar 26 '34	21,815.00 *
21,815.00					Mar 26 '34	227.22	Mar 26 '34	22,042.22† *
22,042.22	Mar 27 '34	6.72—	8.50—	5.00—			Mar 27 '34	21,993.23 *
	Mar 27 '34	12.00—	2.71—	14.06—			Mar 27 '34	21,961.70 *
21,993.23	Mar 27 '34	31.53—						
21,961.70	Mar 28 '34	701.52—	100.00—	13.58—			Mar 28 '34	20,591.60 *
	Mar 28 '34	35.00—	500.00—	20.00—			Mar 28 '34	20,479.24 *
20,591.60	Mar 28 '34	100.00—	8.15—	4.21—			Mar 28 '34	22,081.77 *
20,479.24					Mar 28 '34	1,602.53	Mar 28 '34	22,046.19 *
22,081.77	Mar 29 '34	12.00—	23.58—				Mar 29 '34	2,046.19 *
22,046.19	Mar 29 '34	20,000.00—					Mar 30 '34	1,771.56 *
2,046.19	Mar 30 '34	10.00—	214.63—	50.00—			Mar 31 '34	1,671.56 *
1,771.56	Mar 31 '34	100.00—					Mar 31 '34	1,513.56 *
1,671.56	Mar 31 '34	154.00—	4.00—		Mar 31 '34	1,170.02	Mar 31 '34	2,501.08 *
1,513.56	Mar 31 '34	50.00—	100.00—	32.50—			Apr 2 '34	2,499.24 *
2,501.08	Apr 2 '34	1.84—						
2,499.24	Apr 2 '34	50.00—	150.00—	100.00—			Apr 2 '34	2,101.24 *
	Apr 2 '34	98.00—					Apr 2 '34	1,851.24 *
2,101.24	Apr 2 '34	250.00—						
1,851.24	Apr 3 '34	2.50—	25.74—	50.00—			Apr 3 '34	181.71 *
	Apr 3 '34	1,591.29—					Apr 10 '34	102.12 *
181.71	Apr 10 '34	79.59—					Apr 19 '34	50.24 *
102.12	Apr 19 '34	51.88—					Apr 27 '34	.24 *
50.24	Apr 27 '34	50.00—					Apr 27 '34	.00 *
.24	Apr 27 '34	.24—						

† Figures circled in pencil.

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of Winthrop L. Brown.)

PLAINTIFF'S EXHIBIT No. 184

Deposited with

(Cut)


THE SEABOARD NATIONAL BANK
of Los Angeles

THE ATKINS CORP.

Los Angeles, Calif. 3/26/1934

	Dollars	Cents
Gold		
Silver		
Currency		
Checks		
Meyers 16-291	5000	—
“ “	5000	—
C. C. Roth 16-1	10000	—
C. C.		
1 D A	20,000	—

[Printed in margin] :

 In receiving checks on deposit, this Bank assumes no responsibility for the acts, omissions or failure of any of its direct or indirect collecting agents or agencies, and shall only be held liable when proceeds in actual funds or solvent credits shall have come into its possession. Under these conditions items previously credited may be charged back to the depositor's account. In making this deposit, the depositor hereby assents to the foregoing conditions.

[Endorsed]: Filed Oct. 26, 1942.

The Court: What are they?

Mr. Hile: I might state to the jury that 182 is the signature card of the Atkins Corporation, authorizing the signature of either W. Markowitz or J. F. Simons.

(Testimony of Winthrop L. Brown.)

Exhibits 183 and 184 are deposit slips of the Atkins Corporation and the other an abstract of the Atkins Corporation account. The amount of the deposit ticket is reflected in the account of the Atkins Corporation. The amount of the deposit is \$20,000 under date of March 26, 1934.

Q. Handing you what has been admitted,—It is a check of Lewis Roth, \$10,000.00, cashiers check, Lewis Roth, payable to the Atkins Corporation, payable to the order of the Seaboard National Bank, charged to the Atkins Corporation, I will ask you if 181, Mr. Brown, appears on the ledger sheet which is exhibit 183? [381]

A. Yes, it does.

Q. And does it bear relation to the deposit ticket 182?

A. The deposit ticket is 184.

Q. I beg your pardon, 184?

A. Yes it does. And there is an item on the deposit ticket "C" C. Ross, 16-1, \$10,000" which is the cashiers check.

Q. Can you tell us whether or not that is the same check as is reflected on the deposit ticket?

A. I would say that it is, sir.

Mr. Hile: I offer 185 and 186.

Mr. Simon: No objection.

The Court: They will be admitted in evidence, exhibits 185 and 186.

PLAINTIFF EXHIBIT 183

OCT 26 1942

adn

THIS CHECK IS NOT VALID
FOR THE NORTH CAROLINA
ESTABLISHMENT

APR 23 1946

PAUL F. O'BRIEN
CLERK

[15-23] SIXTH AND ALEXANDRIA BRANCH [15-23] 15187

Bank of America
NATIONAL TRINITY ASSOCIATION
Los Angeles, Cal.

PAY TO THE
ORDER OF

Atkins Corporation.

John Thurnau

H. H. Meyer

PAY TO THE ORDER OF
THE SEABOARD NATIONAL BANK
OF LOS ANGELES
1570
ON DEPOSIT ONLY
The Atkins Corporation

10355

THIS CHECK IS NOT VALID
FOR THE NORTH CAROLINA
ESTABLISHMENT

OCT 26 1942

PAUL F. O'BRIEN
CLERK

PAY TO THE ORDER OF
ANY BANK OR BANKER
FOR DEPOSIT ONLY
LOS ANGELES, CALIF. 1570
MAR 27 1944
SEABOARD NATIONAL BANK
15-152 of Los Angeles 15-235

1364

(Testimony of Winthrop L. Brown.)

Certified Copy

United States of America

Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court in and for the Western District of Washington, do hereby certify that the annexed and foregoing is a true and full copy of the original Defendant's Exhibit No. 286, being check to Atkins Corporation in amount of \$5,000.00 by H. H. Meyers, dated March 26, 1934, admitted July 12, 1939 in Cause No. 15187, U. S. v. Simons, et al.

now remaining among the records of the said Court in my office at Tacoma.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Tacoma, Washington this 1st day of October, A. D. 1942.

[Seal]

JUDSON W. SHORETT

Clerk.

By EDGAR SCOFIELD

Deputy Clerk.



No.
PLATEF EXHIBIT 186
OCT 26 1942

No. 15187

DEPENDENT EXHIBIT 282

Dom 7/1/39

No. 15187
18-257 SIXTH AND ALEXANDRIA PARK
DEPENDENT EXHIBIT 282
ADM 7/1/39

Bank of America
NATIONAL INWAG ASSOCIATION

LOS ANGELES, CAL.

March 26, 1934

Pay to the order of
Attorney Corporation, \$5000.00
Five thousand
DOLLARS

H. H. Mayers

THE SEABOARD NATIONAL BANK
1570
OF LOS ANGELES
NON DEPOSIT ONLY
1570
The Atlantic Corporation
P.O. BOX 1570
LOS ANGELES, CALIFORNIA

PAY TO THE ORDER OF
ANY BANK OR BANKER
MAR 27 1934
40 N. NATURAL BANK
LOS ANGELES 16-128

(Testimony of Winthrop L. Brown.)

Certified Copy

United States of America

Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court in and for the Western District of Washington, do hereby certify that the annexed and foregoing is a true and full copy of the original Defendant's Exhibit No. 282, being check to Atkins Corporation in amount of 5,000.00 of H. H. Meyers, admitted July 11, 1939 in Cause No. 15187, U. S. v. Simons., et al.

now remaining among the records of the said Court in my office at Tacoma.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Tacoma, Washington this 1st day of October, A. D. 1942.

[Seal]

JUDSON W. SHORETT

Clerk.

By EDGAR SCOFIELD

Deputy Clerk.

Exhibits 185 and 186 have a relationship to the deposit ticket handed me. The items are listed as Meyers 16291, \$5,000 each on the deposit slip.

Q. Can you tell us whether or not these are the same checks or photostats of the original checks?

A. I would say they are the photostats of the checks that were deposited.

(Testimony of Winthrop L. Brown.)

Q. And do those items appear in the ledger account of the Atkins Corporation?

A. They would.

Q. They would?

A. They would, yes, under the total of the \$20,000.00 deposit on March 26th.

Q. And does that total of \$20,000.00 tie in with both checks on the deposit ticket?

A. Yes, sir.

Q. Did you make some mention of 1941? [382]

A. No. I said 16291.

Q. That is the number of the bank?

A. That is correct. That is the number of the bank.

Mr. Hile: I would like to call the jury's attention to Government's 183, part of the Atkins Corporation \$20,000.00, March 26, 1934; and the opposite column, check withdrawal \$20,000.00, withdrawal March 29, 1934.

You may examine.

Mr. Simon: No questions. [383]

C. K. GRENSTED,

A witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a banker by occupation connected with the Bank of America National Trust & Savings Asso-

(Testimony of C. K. Grensted.)

ciation as Assistant Vice-President. I have custody of the records of the bank. The A. B. A. number of the Sixth and Alexandria Branch of the Bank of America is 16-291.

Government's 187 is a record of the Bank of America. 188 is a permanent record. Exhibits 187 and 188 admitted in evidence without objection.

PLAINTIFF'S EXHIBIT No. 187

Sixth & Alexandria Br.

619 So. Ridgely Dr
Apt. 101

MEYERS, H. H.

The undersigned depositor agrees with Bank of America
National Trust & Savings Association

that this account is to be carried by said bank as a Commercial
Savings

account and all funds which the undersigned depositor has or may have on deposit therein with said bank shall be governed by its By-Laws, all future amendments thereof, and all regulations passed or hereafter to be passed by its Board of Directors pursuant to said By-Laws relating thereto including interest, service charges, etc.

Sign Here  H. H. Meyers

Address—~~Hotel Gaylord~~

Telephone—Drexel 4000

Business or Occupation—Engineer

Birthplace—

Father's Name.....Mother's Maiden Name.....

Refer to

Introduced by [Illegible] 10-11-38 2200.00

Opened by [Illegible] Date ~~10/3/34~~ Amount—~~3500~~

Acct. Closed..... Aver. Bal. \$..... Reason.....

Tel-(2)-100 Signature Card: Individual, or Individual Trustee

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of C. K. Grensted.)

Q. (By Mr. Hile): Mr. Grensted, handing you what is marked Government's 184 and 188, both of which have been admitted, and with reference to the two items on the deposit tickets, for \$5,000 each, Meyers, I will ask you to state whether or not they are reflected in the account of H. Harry Meyers which is represented by the ledger card that I have handed you?

A. Yes, those items were deposited to the account of the Atkins Corporation and checks drawn against the Meyers account.

Q. Those are shown as withdrawals from Meyers' account? A. Yes.

Q. 188 which has been admitted—Maybe I better go to this first, if I may. 187 which has been admitted is the signature card of H. H. Meyers on the Bank of America, signed here "H. H. Meyers, address Hotel Gaylord, telephone Drexel 4000, occupation Engineer," and referring back again to the deposit tickets—referring now to the account of [384] H. H. Meyers, two withdrawal items, March 27, 1934, \$5,000.00, and \$5,000.00, and 185 and 186, the two checks to which I have before referred, and the deposit tickets showing the deposit of two \$5,000.00 items in the Atkins Company account, and handing you what is marked Government's 189 for identification, I will ask you whether or not that document is a permanent record of your bank, Mr. Grinsted?

A. Yes, it is.

That document is called a loan liability ledger.

(Testimony of C. K. Grensted.)

Same admitted in evidence as exhibit 189 without objection.

Mr. Hile: It is the loan liability ledger, H. H. Meyers, "Business or occupation, Financier, Address, Gaylord Apartments, Date May 6, 1935, loan No. 738, Maturity, August 2, 1935, 6% Class, S. T.

Q. That means what, did you say?

A. Secured time.

Q. Secured time, and what does that mean?

A. It means that the loan is secured by collateral and it is for a certain length of time.

Q. A little louder. I didn't hear you.

A. The loan is secured by collateral and it is for a certain length of time.

Q. St. T. \$25,000.00, and date—I mean May,—it says twenty-five thousand and then date 5-8-'35, two days later, paid \$25,000.00.

Now then, the other item is Date, October 5, 1935, demand, 5%. What does "demand" mean?

A. It means it is payable upon call by the bank.

Q. That is the bank can call in the loan at any time? A. Yes.

Q. "Made \$13,500.00" and showing payment \$13,500.00 on March 16, 1936. [385]

Government's 190 and the liability ledger card 189 are related one to the other. No. 190 shows where the loan of \$25,000 was paid. The loan was made on May 6, 1935. No. 191 is related to 189. That shows the collateral that was paid up for the loan of \$13,500.00.

(Testimony of C. K. Grensted.)

Mr. Simon: We have no objection to 189, 190 and 191.

The Court: They will be admitted in evidence.

(189 previously admitted. Bank records admitted in evidence and marked plaintiff's exhibits 190 and 191.)

(Testimony of C. K. Grensted.)

PLAINTIFF'S EXHIBIT No. 189

LOAN LIABILITY LEDGER

Sheet No. 1

Name—H. H. Meyers

Business }
 or }
 Occupation } Financier
 Address—Gaylord Apts.

Guarantee \$..... Dated.....

Commitment } Secured and }
 Discounts }
 Unsecured.....

"Resolution to Borrowed" Dated.....19..... Limit, \$.....

CONTINGENT LIABILITY				Endorsed or Guarantor for	Endorsed or Secured by							DIRECT LIABILITY							
Date	Made	AMOUNT Paid	Balance			Date	Loan No.	Maturity	%	Com Sav	Class	Made	✓	AMOUNT Paid	✓	Maker	BALANCE Discounted	Total	
Forward																			
						5- 6-35	738.	7-2-35	6	ST.	25,000—				25,000—		25,000—	
						5- 8-35								25,000—				[Illegible]	
						10- 5-35	765.	demand	5		13,500—						13,500—	
						4-16-36								13,500—				[Illegible]	

[Reverse side of sheet not filled in]

[Endorsed]: Filed Jun 28 1943.

(Testimony of C. K. Grensted.)

PLAINTIFF'S EXHIBIT No. 190

RECORD OF LOAN PAYMENTS

May 8th, 1935

Name—H. H. Meyers	Class—ST	Rate %	6	No. = 738 =
Acceptor or Endorser.....	Memo. Balance.....	Actual Time.....	30 Day....	
Funds Received		Interest	Debit	Credit
Cash		From 5/3 to 5/9/35	\$	25.—
Checks 19-10	28,000.—			
less Credit	2,975.—	Principal		25,000.—
Total	25,025.—	Total		25,025.—
Less Cash Change				
To Customer				

[Stamp] : [Illegible] 347 1
Checked—A. Clark

Posted by—P.M.

B. VOGELSANG
Teller

.....
Customer's Signature

[Endorsed]: Filed Jun 28 1943.

(Testimony of C. K. Grensted.)

PLAINTIFF'S EXHIBIT No. 191

RECORD OF COLLATERAL LEDGER COPY

No. 112067

Oct. 4th, 1935

Deposited by

H. H. Myers

Receipt for Partial Return of Securities
I acknowledge receipt of securities
with all unmatured coupons attached de-
scribed on the lines on which I have
placed my signature.

[Stamped]: Mar 30 1936 N

No. Shares	Par Value of Bonds	Certificate Numbers	Description of Issue	Line		Date	Signature	Teller
				No.				
[Illegible]	10,000	1210 L	U. S. Treas. 23/4—47.....	1				
	5,000	1430 L	U. S. Treas. 23/4—47.....	2				
		[Illegible]		3				
			with Mar 15 1936 coupons	4				
			attached	5				

Instructions for Return of 6th & Alexandria Branch (No. 347) Receipt for Return of All Securities
Collateral and Disposition Bank of America I acknowledge receipt of all se-
of Coupons: By B. VOGELSLANG curities with all unmatured coupons
By W. G. COOKE attached, described hereon.

Hold Loan Securities 4-16 1936

Custodian H. H. MEYERS

[Endorsed]: Filed Jun 28 1943.

(Testimony of C. K. Grensted.)

Government's No. 192 is a permanent record of my bank. Said exhibit admitted.

Mr. Hile: Now, I would like to refer to these briefly, if I may, your Honor.

The Court: Yes.

Mr. Hile: 191, which is the record of collateral ledger copy—That is the one that shows, the collateral put up for the loan?

A. That is right.

Mr. Hile: Par value of bonds, \$10,000.00 and \$5,000.00 in other words, \$15,000 total; U. S. Treasury 2 3/4 bonds, certificate numbers of which are given, with coupons attached, and acknowledging the return of the securities to H. H. Meyers, whose signature appears—That is what it is?

A. That is correct.

Q. When the loan was paid the securities were returned to H. H. Meyers?

A. That is what it is, yes.

Q. And 190, with regard to the \$25,000.00 loan appearing on the loan liability ledger, checks 1910, \$28,000.00, [386] less credit of \$2,975.00, making a total of \$25,025.00, which is shown as applied on the loan. That is what that is? A. Yes.

Q. Shows that that was in payment of the loan of \$25,000.00? A. That is correct.

Exhibit 192 read to the jury.

Q. Handing you what has been marked 193 for identification, I will ask you what, if any, relation it bears to 190 which has been admitted?

A. \$28,000.00 cashier's check of the Peoples Bank & Trust Company, Seattle, was part payment of the \$25,000.00 note, plus the \$25.00 interest.

(Testimony of C. K. Grensted.)

Q. Part payment? Or was it payment in full?

A. It was payment in full, but it was—part of the \$28,000.00 was used to pay the note in full.

Q. I see. And the balance went where?

A. Was credited to his account.

Q. To the account of Mr. Meyers?

A. H. H. Meyers.

Mr. Hile: I offer 193.

Mr. Simon: No objection.

The Court: It will be admitted in evidence.

Government's 194 through 217 inclusive are records of my bank, aside from the photostats attached. They are deposit slips of H. H. Meyers. Said exhibits admitted.

Mr. Hile: I would like to read some of these. There is not much to read on them; your Honor.

PLAINTIFF EXHIBIT 192

[Letterhead]

OLYMPIC HOTEL

FRANK W. HULL

SEATTLE, Washington

Manager

May 6th, 1935.

Bank of America,
6th & Alexandria Branch,
Los Angeles, California.

Attention: Mr. V. Vogelsang, Manager,

Dear Mr. Vogelsang:

You will find enclosed cashiers check of the Peoples Bank & Trust Company for \$28,000.00. You will kindly pay my note for \$25,000.00 and what-

(Testimony of C. K. Grensted.)

ever the interest charge is place the balance to my account.

[Longhand in margin] 1 day

You will kindly notify Mrs. Meyers at the Gaylord and give her the cancelled note, also returning the CD on the Farmer's and Merchants Bank.

Also send me a cashiers check for \$4,000.00 and charge same to my account.

Thanking you again for your attention in this matter and with kind personal regards and advise me immediately care of the above hotel. I remain

Yours very sincerely,

DOC. H. H. MEYERS.

HHM:MH

[Longhand] 300

4.16

4

16.65

8.32

24.97

PLAINTIFF'S EXHIBIT No. 193

Main Office

Peoples Bank and Trust Company 19-10

No. 80978

Seattle, Washington, May 6, '35

Pay to the Order of * * * Bank of America * * * \$28,000.00

Exactly 28000 - 00 Cts

[Perforation illegible]

[Stamped]: Illegible

CASHIER'S CHECK

V. A. GREEN

Vice President

Cashier

(Testimony of C. K. Grensted.)

[Reverse Side]

[Stamped]: Pay to the order of any bank or banker or through Clearing House Association of Seattle. All prior endorsements guaranteed. 193 May 10, 1935. 193 The National Bank of Commerce of Seattle Washington. [Perforation across face of stamp illegible.]

[Stamped]: Sixth and Alexandria Branch Bank of America National Trust & Savings Association. 16-291 203 May 9, 1935. Pay to the Order of any bank or banker or through Los Angeles Clearing House. Prior endorsements guaranteed. Bank of America 16-66 National Trust and Savings Association, Los Angeles, Calif.. Successors to Bank of America [Illegible].

[Endorsed]: Filed Jun 28 1943.

PLAINTIFF'S EXHIBIT No. 194

BANK OF AMERICA
National Trust & Savings Association
Deposited for Account
Name—H. H. Meyers
Address.....

Date—May 2, 1935

Dollars Cents

Currency
Silver
Gold

Checks:

List by Bank Number separately, below, each check comprising this deposit.

Telegraphic Transfer.....	1	\$15,000.—
.....	2	
.....	3	
.....	4	15,000.—

[Initialed]: E C

[Stamped] (Cut) 347 1.

[Endorsed]: Filed Jun 28 1943.

(Testimony of C. K. Grensted.)

PLAINTIFF'S EXHIBIT No. 195

BANK OF AMERICA
National Trust & Savings Association

Deposited for Account
Name—H. H. Meyers

Address.....

Date—5-6 1935

Dollars Cents

Currency
Silver
Gold

Checks:

List by Bank Number separately, below, each check comprising this deposit.

Notes	1	\$25,000.—
.....	2	
.....	3	
.....	4	25,000.—

[Initialed]: A

[Stampel]: (Cut) 347 1

[Endorsed]: Filed Jun 28 1943.

PLAINTIFF'S EXHIBIT No. 197

BANK OF AMERICA
National Trust & Savings Association

Deposited for Account
Name—H. H. Meyers

Address.....

Date—7-11 1935

Dollars Cents

Currency 18,000.—
Coin

(Testimony of C. K. Grensted.)

Checks

List by Bank Numbers separately, below, each check comprising this deposit.

1 18,000.—

[Initials illegible]

[Stamped]: (Cut) 347 1

[Endorsed]: Filed Jun 28 1943.

PLAINTIFF'S EXHIBIT No. 202

In-Mail Deposit Ticket

BANK OF AMERICA

National Trust & Savings Association

Please credit Commercial ☒ Savings \$.....Account of

Name—H. H. Meyers

Address.....

9-3 1935

Please list below each check separately. Describe by Bank Number shown on check. If coupons, insert name of issue.

	Dollars	Cents
Currency	7,424.	—
Silver		—
Gold		—

Checks:

(Give Details Below)

.....	1	
.....	2	7,424.—
Total.....		

[Initials illegible]

[Stamped]: (Cut) 347 1

See Back for Instructions for Customers
Making Deposits by Mail

(Testimony of C. K. Grensted.)

[Reverse Side]

INSTRUCTIONS

The bank will acknowledge the receipt of all deposits sent by mail. It is, therefore, not necessary to send your passbook each time a remittance is made.

Cash to the amount of \$50.00 may be sent by registered mail at the risk of the government upon the payment of a registry fee of 15c and to the amount of \$100.00 upon the payment of a registry fee of 20c. Larger amounts should be sent by express.

It is important that all Drafts, Checks and Money Orders payable to you (or endorsed to you) should be endorsed on the back in the following manner:

Pay to the Order of
BANK OF AMERICA
National Trust & Savings Association
(Signature of Depositor)

[Endorsed]: Filed Jun 28 1943.

PLAINTIFF'S EXHIBIT No. 205

BANK OF AMERICA
National Trust & Savings Association

Deposit for Account

Name—H. H. Meyers

Address.....

Date—10-5, 1935

Dollars Cents

Currency
Coin

Checks

List by Bank Number separately, below, each check comprising this deposit.

(Testimony of C. K. Grensted.)

.....	1	
note	2	13,500.—
.....	3	
.....	5	
.....	6	13,500.—

[Initialed] : V

[Endorsed]: Filed Jun 28 1943.

PLAINTIFF'S EXHIBIT No. 207

BANK OF AMERICA
National Trust & Savings Association

Deposit for Account

Name—H. H. Meyers

Address.....

Date—1-23, 1936

Dollars Cents

Currency

Coin

Checks

List by Bank Number separately, below, each check comprising this deposit.

16-77	1	1,792.—
-------------	---	---------

[Initialed] : C

[Stamped]: (Cut) 347 1

[Endorsed]: Filed Jun 28 1943.

(Testimony of C. K. Grensted.)

PLAINTIFF'S EXHIBIT No. 208

Commercial

BANK OF AMERICA
National Trust & Savings Association

Deposited for Account

Name—H. H. Meyers

Address.....

Date—Jan 24, 1936

Dollars Cents

Currency
Coin

Checks

List by Bank Number separately, below, each check comprising this deposit.

1077 1 7,944.—

[Initial illegible]

[Stamped]: (Cut) 347 2

[Endorsed]: Filed Jun 28 1943.

The Court: Very well.

Mr. Hile: 194, deposit to the account of H. Harry Meyers—That is the case in each one of these and I [387] won't read that again. May 2, 1935, telegraphic transfer \$15,000.00; May 6, 1935; note \$25,000.00.

Q. Does that have any relation to that loan liability, Mr. Grensted?

A. I would have to check the loan liability ledger sheet to compare the dates.

(Testimony of C. K. Grensted.)

Q. Will you check, then, 195 against 189?

A. Yes, that is it.

Mr. Simon: It is admitted that they are records of the bank and that those sums were deposited to Dr. Meyers' account.

Q. (By Mr. Hile): I have forgotten what your answer was with regard to this \$25,000.00 note, with reference to the loan liability?

A. That indicates the proceeds of the loan.

Q. In other words, Mr. Meyers obtained this loan and then deposited it in the bank?

A. To the credit of H. H. Meyers.

Mr. Hile: 196, checks, 19-10, \$28,000.00, less note and interest, \$25,000.25 (\$25,025.00) leaving a credit of \$2,975.00. Does that bear any relationship to the loan liability ledger card?

A. Yes, that is the \$2,975.00, the balance that went to the credit of H. H. Meyers from the \$28,000.00 check, which went to pay the \$25,000.00 note, plus interest.

Mr. Hile continued reading from exhibits 197 to 217.

The deposit of October 5, 1935 of \$13,500.00 shown on Exhibits 205 is a deposit of the proceeds of the \$13,500 loan to Meyers of the same date shown on loan liability ledger card, exhibit 189. [388]

Exhibit 218 is a recordex of the check drawn on Union Bank and Trust Company. At that time we took recordex pictures of checks that went out of town. It is related to Exhibit 204 and 182. It is a

(Testimony of C. K. Grensted.)

check that was deposited and appears on the ledger sheet as of September 24, 1935.

Exhibit 218 admitted over objection only as to its materiality not the identification.

PLAINTIFF'S EXHIBIT No. 218

Seattle, Washington, 9/21/1935 No.....

19-10 Main Office 19-10

PEOPLES BANK AND TRUST COMPANY

Pay to the Order of Cash.....\$3000.00

Three Thousand and No/100 Dollars

[Label] J. H. SIMONS

[Endorsed]: Filed Oct. 26, 1942.

Mr. Hile: I would like to refer to that if I may.

The Court: Very well.

Mr. Hile: This Recordex which has been identified is a check, Seattle, Washington, September 21, 1935, "Pay to the order of Cash, \$3,000.00, J. F. Simons." The deposit ticket of H. Harry Meyers, September 24, 1935, Seattle, \$3,000.00.

Exhibits 219 to 222 inclusive are duplicate applications for four certified checks with the checks attached, No. 219 of July 11, 1935 check for \$20,000.00, payable to Peoples Gas and Oil Development Company, No. 220, December 4, 1935 for \$15,000 to the same company; No. 221, October 5, 1935 for \$13,500.00 to the same company and No. 222, August 24, 1935 for \$5,000 to Peoples Drillers, Inc.

Pay to FIRST NATIONAL BANK
SEABOARD BRANCH
2212 SEATTLE, WASH. OR ORDER 2212
PEOPLES GAS & OIL DEVELOPMENT CO.

Pay to the order of *Peoples Gas & Oil Development Co.*
through the *Seaboard Branch*
and please enclose *check*
19-1 *1935*
16-1 *1935*
15-1 *1935*
14-1 *1935*
13-1 *1935*
12-1 *1935*
11-1 *1935*
10-1 *1935*
9-1 *1935*
8-1 *1935*
7-1 *1935*
6-1 *1935*
5-1 *1935*
4-1 *1935*
3-1 *1935*
2-1 *1935*
1-1 *1935*

Pay to the order of
Peoples Gas & Oil Development Co.
Dr. H. H. Mayers

SEABOARD BRANCH
Oct 1 1942

PT 221
adm.
OCT 26 1942

16-291 SIXTH AND ALEXANDRIA BRANCH 16-291
2801 WEST SIXTH ST.

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION
LOS ANGELES, CAL.

NO.

Oct. 5, 1942

1942

\$18,500.00

DOLLARS

H. H. Mayers

DATE *Oct 1 1942* No. *347-402*
CERTIFIED
GOOD WHEN PROPERLY ENDORSED
BANK OF AMERICA
TO THE ORDER OF *Peoples Gas & Oil Development Co.*

(Testimony of C. K. Grensted.)

Cross Examination

By Mr. Simon:

Mr. Meyers did business with our bank from October 4, 1931. The account was quite active. It was the type of account which was used for the transaction of business and not for accumulation. On a couple of occasions he borrowed money and repaid it. It did not know him personally. In opening a new account where there is no application for a loan, the occupation is requested merely for identification. The customer makes his own notation and if a man like Meyers [389] notes himself as an engineer we would probably know that he was not a railroad engineer. It was merely to identify him generally in the business he was interested in. I do not know whether Meyers had any other bank accounts.

Dr. Meyers had purchased certificates of deposit from our bank previously. Exhibit 192 indicates that he also held \$25,000 certificate of deposit in the Farmers & Merchants Bank. There was nothing irregular or improper in connection with his account.

Redirect Examination

By Mr. Hile:

The fact that one opening an account in the bank did not show his occupation correctly would have no effect on lending him money because the bank requires security.

(Testimony of C. K. Grensted.)

Re-cross Examination

Mr. Simon:

I do not know whether Dr. Meyers ever asked for an unsecured loan. [390]

W. J. HUNTER

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am Assistant Cashier of the Union Bank & Trust Company in Los Angeles and have custody of the bank records. The bank's A.B.A. number is 16-77.

Exhibits 223 and 224 are permanent records of the bank. No. 224 being the ledger account of the Atkins Corporation, and 223 the signature card controlling the account. Said exhibits admitted.

UB 37 1M-10

Oct 223
adn
OCT 28 1942



Authorized Signature of

THE ATKINS CORPORATION

In Account with

UNION BANK & TRUST CO.
OF LOS ANGELES
COMMERCIAL TRUST

THE DEPOSITOR HEREBY AGREES THAT THIS ACCOUNT SHALL BE GOVERNED BY THE CONDITIONS, RULES AND REGULATIONS PRINTED IN THE PASS BOOK COVERING THIS ACCOUNT, AND BY THE RULES, REGULATIONS AND BY-LAWS OF THIS BANK

PLEASE DESIGNATE OFFICIAL TITLE WHEN SIGNING BELOW

W. Markowitz
W. F. Simons

W. MARKOWITZ, President

J. F. SIMONS, Vice Pres.

ONE

Signatures required

Corporation

NAME

10. 10. 10. 10. 10.

RESS

11. 11. 11. 11. 11.

BUSINESS

INDUCED BY *A. B. Fox*

(VICE President, National Bank of Springfield)

12. 12. 12. 12. 12.

13. 13. 13. 13. 13.

14. 14. 14. 14. 14.

WITNESSED That either *W. Markowitz* President

or *J. F. Simons* Vice President

acting in conjunction with either

W. Markowitz Vice President

be and they are hereby authorized to sign Checks and Drafts for and on behalf of this Corporation, and to endorse and cash or deposit Checks and Drafts payable to this Corporation.

This Corporation shall be liable to and shall reimburse immediately any check or draft signed as aforesaid may be drawn for the amount of any overdraft.

THIS IS TO CERTIFY That the foregoing is a true and correct copy of a resolution appearing upon the minute book of

The Atkins Corporation Corporation

That said Resolution was regularly adopted at a meeting of the majority of the directors of said Corporation held on the

27th day of *March* 19*34*, in accordance with the Laws and By-Laws of the Corporation

That said resolution was not been repealed or modified

ATTEST: *W. Markowitz* President

AND *A. B. Fox* Secretary

OF *The Atkins Corporation*

A CORPORATION

Opened by *W. Markowitz*

Book Initialed *W. Markowitz*

Safe Deposit *10000*

(Testimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 224

LEDGER

THE ATKINS CORPORATION

No. 1 A

Date	Checks		Fed. Tax Balance Forward	Deposits 20,000.00	Date	Balance
200.00—	175.00—	1,402.83—	.06—		Mar 28 '34	20,000.00 •
500.00—			.02—		Mar 29 '34	18,222.11 •
250.00—	960.52—	375.00—	.06—		Mar 30 '34	17,722.09 •
550.00—			.02—		Apr 2 '34	Hold† 16,136.51 •
126.05—			.02—		Apr 2 '34	\$402.87† 15,586.49 •
75.00—	75.00—	50.00—	.06—		Apr 4 '34	3-27† 15,460.42 •
250.00—	75.00—	179.00—	.06—		No. 21†	
15.00—	30.00—		.04—		Apr 9 '34	14,756.30 •
262.50—			.02—		Apr 12 '34	14,711.26 •
165.00—	50.00—	100.00—	.06—		Apr 13 '34	14,448.74 •
100.00—	90.00—		.04—		Apr 16 '34	13,943.64 •
100.00—			.02—		Apr 16 '34	13,843.62 •
71.50—			.02—		Apr 17 '34	13,772.10 •
100.00—	25.00—	125.00—	.06—		Apr 19 '34	13,522.04 •
8.50—	75.60—	160.89—	.06—			
10.00—	8.50—	15.58—	.06—		Apr 20 '34	13,242.85 •
150.00—			.02—		Apr 21 '34	13,092.83 •
20.00—	100.00—	100.00—	.06—			
50.00—	100.00—	50.00—	.06—			
51.76—	25.00—	100.00—	.06—			
12.95—			.02—		Apr 23 '34	12,482.92 •
150.00—	25.00—	200.00—	.06—		Apr 24 '34	12,107.86 •
40.95—			.02—		Apr 25 '34	12,066.89 •
44.00—	50.00—	100.00—	.06—			
7.00—	13.50—		.04—		Apr 26 '34	11,852.29 •
640.00—	8.00—	3.10—	.06—			
45.00—	21.25—	38.25—	.06—		Apr 27 '34	11,096.57 •
640.00—			.02—		Apr 27 '34	10,456.55 •
5.40—			.02—		Apr 28 '34	10,451.13 •
13.80—	2.69—	1.50—	.06—			
10.00—	137.63—		.04—		Apr 30 '34	Hold† \$1800† 10,285.41 •
180.00—			.02—		Apr 30 '34	4-30† 10,105.39 •
32.00—			.02—		May 1 '34	No. 21† 10,073.37 •
100.00—	25.00—	25.00—	.06—			
58.00—	25.00—		.04—		May 3 '34	9,840.27 •
2,500.00—	37.50—	62.50—	.06—			
31.60—			.02—		May 4 '34	7,208.59 •
3.00—	35.00—	200.00—	.06—			
300.00—			.02—		May 5 '34	6,670.51 •
640.00—			.02—		May 7 '34	6,030.49 •
43.56—			.02—		May 8 '34	5,986.91 •
3,000.00—			.02—		May 28 '34	2,986.89 •
1,487.23—			.02—		Jun 4 '34	1,499.64 •
32.94—	61.60—	60.40—	.06—		Jun 9 '34	4,364.64 •
				42.64		
				61.60		
				60.40		
				.06		
1,499.62—			.02—		Jun 9 EC	4,499.94 •
					Jun 9 '34	1,499.64 •
					Jun 25 '34	.00 •
			Balance Forward	4-27		

† Pencil notation in margin.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

(Reverse side of sheet not filled in.)

[Endorsed]: Filed Jun 28, 1943.

(Testimony of W. J. Hunter.)

Exhibit 225 is a deposit of \$20,000 by the Atkins Corporation March 28, 1934. It was made by a check on the Seaboard office of the Bank of America at Los Angeles. It was formerly the Seaboard National of Los Angeles. Said exhibit admitted.

Mr. Hile: Reading from 183, which is the Seaboard National Bank of Los Angeles, deposit \$20,000.00; and reading again from that same exhibit, a withdrawal of March 29, 1934 of \$20,000.00. Then a deposit ticket showing an item of \$20,000.00 on that same bank going into the Atkins Corporation, Union Bank & Trust Company; and reading the opening deposit on 2-24; \$20,000.00 to the Atkins Corporation, Union Bank & Trust Company.

PLAINTIFF'S EXHIBIT No. 225

UB 208


[Stamp]: New Account Commercial

Deposited With

UNION BANK & TRUST CO.
of Los Angeles

Savings Commercial Trust

Date—Mar 28 '34

 In making this deposit and at all times in doing business with this bank, the depositor specifically agrees to each and all of the terms and conditions printed on the reverse side hereof and to each and all of the By-Laws, Rules and Regulations of this bank.

Depositor—The Atkins Corporation

Term.....Special.....Com'l

[Stamp]: New Account Commercial

(Testimony of W. J. Hunter.)

	Dollars	Cents
Gold		
Silver		
Currency		
Checks 16-128	20,000.—	
(Specify number of bank upon which checks are drawn)		

[Stamp]: Hold [In pencil]: 20000 2 days

[Stamp]: 1 Mar 28 1934

[Reverse side of Slip]

[In pencil]: 1 only

Every Officer Instantly Available at All Times

(Cut)

Interest Paid on Term Savings Accounts

Savings Commercial Trust

Eighth and Hill Streets

Member Federal Reserve System

We Have No Branches

Safe Deposit Boxes for Rent \$4.00 and Up Per Year

In receiving checks, drafts, notes or other paper for deposit, credit or collection, the same are credited only subject to final payment, and the bank assumes no responsibility for any act, omission, failure, neglect or default of any of its direct or indirect collecting agents, or for the loss of any such paper in the mail, and shall be held liable only for proceeds in money which have come into its possession. Under these conditions, items previously credited may be charged back to the depositor's account. The right is reserved and this bank is authorized to forward all such paper for payment or collection directly to the drawee bank or through any other bank and to receive payment by draft drawn by the drawee or any other bank. In making this deposit the depositor hereby expressly assents to each and all of the foregoing conditions.

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of W. J. Hunter.)

Exhibit 226 is the signature card of Louis Roth. Exhibit 227 is the commercial ledger account of Louis Roth and 228 is the deposit by Roth, July 9, 1935, of \$18,260.94. Said exhibits admitted.

Vol. 27

No. 18

Regular Issue

May 1, 1919

LEDGER

MR. LOUIS ROTH

10 A

Date	Checks	Balance	Deposits	Date	Balance
S 25.50—		.02—	Forward 1.25	Dec 12 '33	201.25 S
13.62—		.02—		Dec 12 '33	175.64 •
10.00—		.02—		Dec 13 '33	162.00 •
				Dec 14 '33	151.98 •
400.00—		.02—	1,045.00	Dec 14 '33	1,196.98 •
325.00—	35.00—	.04—	400.00	Dec 14 '33	1,196.96 •
20.00—		.02—		Dec 15 '33	836.92 •
155.75—		.02—		Dec 16 '33	816.90 •
				Dec 18 '33	661.13 •
12.50—	50.00—	.02—	1.00	Dec 18 '33	662.13 •
				Dec 20 '33	599.61 •
15.00—	9.00—	1.60—	50.00	Dec 22 '33	649.61 •
30.06—	34.40—	103.42—			
			15.00		
			9.00		
			1.60		
			.06		
			30.06		
			34.40		
			103.42		
			.06	Dec 23 '33	649.61 •
35.00—		.02—		Dec 26 '33	614.59 •
50.00—			75.00	Dec 26 '33	639.59 •
			50.00	Dec 27 '33	689.59 •
50.00—		.02—		Dec 30 '33	639.57 •
35.00—	130.30—	50.00—	.06—	Jan 2 '34	424.21 •
			25.00		
			50.00	Jan 2 '34	499.21 •
61.12—	25.00—	.04—		Jan 3 '34	413.05 •
25.00—		.02—		Jan 4 '34	388.03 •
325.00—		.02—		Jan 5 '34	63.01 •
			65.00	Jan 5 '34	128.01 •
10.00—		.02—		Jan 6 '34	117.99 •
			25.00	Jan 8 '34	142.99 •
20.00—		.02—		Jan 8 '34	122.97 •
21.40—		.02—		Jan 9 '33	101.55 •
			40.00	Jan 12 '34	141.55 •
62.50—	1,250.00—	.04—	1,250.00	Jan 15 '34	79.01 •
18.75—		.02—		Jan 16 '34	60.24 •
			75.00	Jan 16 '34	135.24 •
11.90—		.02—		Jan 17 '34	123.32 •
15.00—		.02—		Jan 17 '34	108.30 •
20.00—		.02—		Jan 18 '34	88.28 •
			25.00	Jan 19 '34	113.28 •
30.00—		.02—		Jan 24 '34	83.26 •
20.00—		.02—		Jan 24 '34	63.24 •
			50.00	Jan 25 '34	113.24 •
			25.00	Jan 26 '34	138.24 •
18.75—		.02—	25.00	Jan 29 '34	144.47 •
3.35—		.02—		Jan 30 '34	141.10 •
25.00—		.02—		Feb 2 '34	116.08 •
			45.00	Feb 2 '34	161.08 •
20.06—		.02—	25.00	Feb 5 '34	166.00 •
			Balance Forward 1.25		

1/15†

† Pencil notation in margin

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 10 B

Date	Checks		Deposits	Date	Balance
			Balance Forward 27	Feb 5 '34	166.00 •
25.25—			.02—	Feb 7 '34	140.73 •
10.00—	12.75—		.04—	Feb 8 '34	117.94 •
15.00—			.02—	Feb 9 '34	102.92 •
			65.00	Feb 9 '34	167.92 •
15.00—			25.00	Feb 13 '34	177.90 •
15.00—	10.00—	28.50—	.06—	Feb 14 '34	124.34 •
75.00—			.02—	Feb 14 '34	49.32 •
25.00—			.02—	Feb 15 '34	24.30 •
			95.00	Feb 16 '34	119.30 •
			25.00	Feb 19 '34	144.30 •
10.00—			.02—	Feb 19 '34	134.28 •
3.00—			.02—	Feb 20 '34	131.26 •
18.75—			.02—	Feb 20 '34	112.49 •
10.00—			.02—	Feb 23 '34	102.47 •
			20.00	Feb 23 '34	122.47 •
22.41—			.02—	Feb 24 '34	100.04 •
25.00—			.02—	Feb 24 '34	75.02 •
9.91—			.02—	Feb 27 '34	65.09 •
			75.00	Feb 28 '34	140.09 •
19.00—			.02—	Feb 28 '34	121.07 •
8.25—			.02—	Mar 2 '34	112.80 •
54.00—			.02—	Mar 2 '34	103.78 •
10.00—			.02—	Mar 3 '34	93.76 •
27.08—			.02—	Mar 5 '34	566.66 •
1,000.00—			.02—	Mar 6 '34	241.64 •
144.80—			.02—	Mar 7 '34	96.82 •
15.00—			.02—	Mar 9 '34	81.80 •
			25.00	Mar 9 '34	106.80 •
5.00—			.02—	Mar 14 '34	101.78 •
20.45—			.02—	Mar 15 '34	81.31 •
			50.00	Mar 15 '34	131.31 •
			65.00		
			400.00	Mar 16 '34	596.31 •
15.00—	400.00—	62.00—†	.06—	Mar 17 '34	149.25 •
62.50—			30.00	Mar 17 '34	400†
114.20—			62.00†	Mar 17 '34	148.75 •
			.02—	Mar 19 '34	3/17†
			30.00	21†	34.53 •
			30.00	Mar 23 '34	Hold†
450.00—			450.00	Mar 24 '34	94.53 •
			75.00	Mar 26 '34	\$4.50†
19.75—			.02—	Mar 27 '34	544.53 •
			100.00	Mar 26 '34	169.53 •
			450.00	Mar 27 '34	1/2 day†
10.00—			.02—	Mar 28 '34	3/26†
100.00—				Mar 28 '34	No. [Illeg.]†
450.00—				Mar 29 '34	699.76 •
				Mar 29 '34	689.74 •
				Mar 29 '34	589.74 •
				Mar 30 '34	139.74 •
			Balance Forward 27		

† Figures circled in pencil.

‡ Notation in margin.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

1871

1872

1873

1874

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 11 A

Date	Checks	Fed. Tax Balance Forward	Deposits Forward	Date	Balance
10.00—		.02—		Mar 31 '34	139.74
				Mar 31 '34	129.72 •
			75.00		
			25.00	Mar 31 '34	229.72 •
			25.00	Apr 2 '34	254.72 •
500.00—	33.38—	.04—	300.00	Apr 3 '34	21.30 •
			441.33	Apr 4 '34	462.63 •
			25.00	Apr 5 '34	487.63 •
			40.00	Apr 6 '34	527.63 •
			25.00	Apr 9 '34	552.63 •
30.00—		.02—		Apr 10 '34	522.61 •
2.50—	23.24—	.04—		Apr 12 '34	496.83 •
62.50—	15.00—	.04—	25.00	Apr 12 '34	444.29 •
10.00—		.02—		Apr 13 '34	434.27 •
			55.00	Apr 13 '34	489.27 •
10.00—		.02—		Apr 14 '34	479.25 •
41.00—		.02—		Apr 14 '34	438.23 •
23.75—		.02—	25.00	Apr 16 '34	439.46 •
10.00—		.02—		Apr 17 '34	429.44 •
			50.00	Apr 17 '34	479.44 •
15.00—		.02—		Apr 18 '34	464.42 •
15.00—		.02—		Apr 18 '34	449.40 •
14.00—	25.00—	.04—		Apr 21 '34	410.36 •
20.00—	15.00—	.04—	25.00	Apr 23 '34	400.32 •
50.00—		.02—		Apr 24 '34	350.30 •
			50.00		
			25.00	Apr 24 '34	425.30 •
6.47—		.02—		Apr 25 '34	418.81 •
10.00—		.02—		Apr 26 '34	408.79 •
			115.00	Apr 27 '34	523.79 •
			25.00	Apr 28 '34	548.79 •
23.74—		.02—		Apr 30 '34	525.03 •
			25.00	May 1 '34	550.03 •
12.79—		.02—		May 2 '34	537.22 •
10.00—	25.00—	.04—		May 3 '34	502.18 •
33.53—		.02—		May 3 '34	468.63 •
137.50—		.02—	25.00	May 4 '34	
			45.00	May 4 '34	401.11 •
25.00—		.02—		May 5 '34	376.09 •
19.37—	5.00—	.04—		May 8 '34	351.68 •
			25.00	May 8 '34	376.68 •
11 89—	20.00—	.04—		May 9 '34	344.75 •
			65.00	May 10 '34	409.75 •
			25.00	May 11 '34	434.75 •
			25.00	May 14 '34	459.75 •
20.25—		.02—		May 15 '34	439.48 •
20.00—		.02—		May 15 '34	419.46 •
15.00—		.02—		May 16 '34	404.44 •
			Balance Forward		

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

1841

1842

1843

1844

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 11 B

Date	Checks	Fed. Tax	Deposits	Date	Balance
		Balance Forward	425	May 16 '34	404.44
25.00—			25.00	May 16 '34	379.44 •
		.02—		May 17 '34	404.44 •
10.00—		.02—		May 21 '34	394.42 •
25.00—				May 22 '34	369.40 •
			200.00	May 23 '34	569.40 •
61.85—		.02—	25.00	May 23 '34	594.40 •
140.50—		.02—		May 24 '34	532.53 •
161.10—		.02—			
			50.00	May 25 '34	230.89 •
			25.00	May 25 '34	280.89 •
26.63—		.02—	25.00	May 28 '34	305.89 •
38.10—		.02—		May 28 '34	304.24 •
12.50—		.02—		May 31 '34	266.12 •
			25.00	Jun 1 '34	253.60 •
			25.00	Jun 1 '34	278.60 •
			25.00	Jun 4 '34	303.60 •
150.00—	38.19—	.04—	25.00	Jun 8 '34	328.60 •
				Jun 11 '34	140.37 •
25.00—				Jun 11 '34	165.37 •
21.41—		.02—		Jun 13 '34	140.37 •
			50.00	Jun 15 '34	118.94 •
			25.00	Jun 15 '34	168.94 •
			25.00	Jun 16 '34	193.94 •
			25.00		
60.00—	50.00—	.02—		Jun 18 '34	243.94 •
			125.00	Jun 19 '34	133.92 •
26.37—	11.66—	.04—		Jun 19 '34	258.92 •
			50.00	Jun 20 '34	220.85 •
20.00—		.02—		Jun 20 '34	270.85 •
			25.00	Jun 22 '34	250.83 •
			37.50	Jun 22 '34	275.83 •
15.00—		.02—		Jun 25 '34	313.33 •
15.43—		.02—		Jun 27 '34	298.31 •
			25.00	Jun 28 '34	282.86 •
			65.00		
55.00—	14.15—	.04—		Jun 29 '34	372.86 •
			25.00	Jun 30 '34	303.67 •
3.00—		.02—		Jul 2 '34	328.67 •
10.00—	19.94—	.04—		Jul 3 '34	325.65 •
			25.00	Jul 3 '34	295.67 •
			45.00		
			300.00	Jul 6 '34	365.67 •
25.45—		.02—		Jul 9 '34	665.67 •
25.00—		.02—	25.00	Jul 10 '34	640.20 •
				Jul 10 '34	640.18 •
		Balance Forward	425		

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 12 A

Date	Checks	Fed. Tax Balance Forward	Deposits 625.00	Date	Balance
				Jul 12 '34	640.18 S
212.50—		.02—		Jul 12 '34	1,265.18 •
1,000.00—		.02—		Jul 12 '34	1,052.66 •
10.00—		.02—	40.00	Jul 13 '34	52.64 •
11.22—		.02—		Jul 13 '34	82.62 •
				Jul 14 '34	71.38 •
			25.00	Jul 14 '34	96.38 •
			25.00	Jul 16 '34	121.38 •
			25.00	Jul 17 '34	146.38 •
20.00—		.02—		Jul 18 '34	126.36 •
10.00—	10.00—	.04—		Jul 19 '34	106.32 •
			25.00	Jul 20 '34	131.32 •
			25.00	Jul 23 '34	156.32 •
10.00—		.02—		Jul 27 '34	146.30 •
			60.00		
			25.00	Jul 30 '34	231.30 •
5.00—		.02—		Jul 31 '34	226.28 •
11.29—		.02—		Aug 2 '34	214.97 •
			25.00	Aug 2 '34	239.97 •
53.04—		.02—		Aug 3 '34	186.91 •
			65.00		
			25.00	Aug 3 '34	276.91 •
30.05—		.02—		Aug 6 '34	246.84 •
			25.00	Aug 6 '34	271.84 •
44.68—		.02—		Aug 7 '34	227.14 •
2.00—				Aug 7 '34	225.14 •
25.00—		.02—		Aug 8 '34	200.12 •
			65.00		
			25.00	Aug 10 '34	290.12 •
25.00—		.02—		Aug 14 '34	265.10 •
162.50—		.02—		Aug 14 '34	102.58 •
			25.00	Aug 14 '34	127.58 •
20.00—		.02—		Aug 15 '34	107.56 •
5.00—		.02—		Aug 16 '34	102.54 •
			50.00	Aug 16 '34	152.54 •
			25.00	Aug 17 '34	177.54 •
5.00—		.02—		Aug 18 '34	172.52 •
			25.00	Aug 21 '34	197.52 •
			25.00	Aug 23 '34	222.52 •
			25.00	Aug 27 '34	247.52 •
			40.00	Aug 29 '34	287.52 •
20.00—		.02—		Aug 30 '34	267.50 •
75.00—		.02—		Aug 30 '34	192.48 •
8.77—		.02—		Aug 31 '34	183.69 •
			90.00	Aug 31 '34	273.69 •
			25.00	Sep 4 '34	298.69 •
28.00—		.02—		Sep 5 '34	270.67 •
		Balance Forward	625.00		

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

1871

1872

1873

1874

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 12 B

Date	Checks	Fed. Tax	Deposits	Date	Balance
		Balance Forward	8.21	Sep 5 '34	270.67 S
50.00—		.02—		Sep 5 '34	220.65 •
75.00—		.02—		Sep 9 '34	145.63 •
			25.00		
			65.00	Sep 7 '34	235.63 •
33.48—		.02—		Sep 7 '34	202.13 •
			25.00	Sep 8 '34	227.13 •
40.00—		.02—		Sep 11 '34	187.11 •
112.50—		.02—		Sep 12 '34	74.59 •
30.00—		.02—		Sep 12 '34	44.57 •
			25.00	Sep 14 '34	69.57 •
38.21—		.02—		Sep 14 '34	31.34 •
32.65—	8.21—	.04—		Sep 15 '34	9.560D
			65.00	Sep 15 '34	55.44 •
10.00—		.02—		Sep 17 '34	45.42 •
			25.00	Sep 17 '34	70.42 •
12.00—		.02—		Sep 18 '34	58.40 •
20.00—		.02—		Sep 18 '34	38.38 •
			25.00	Sep 20 '34	63.38 •
			25.00	Sep 24 '34	88.38 •
20.00—		.02—		Sep 27 '34	68.36 •
			95.00		
			25.00	Sep 28 '34	188.36 •
			25.00	Oct 1 '34	213.36 •
7.50—		.02—		Oct 4 '34	205.84 •
			55.00	Oct 5 '34	260.84 •
24.52—	24.35—	.06—		Oct 6 '34	181.41 •
			25.00	Oct 8 '34	206.41 •
36.25—		.02—	25.00	Oct 9 '34	195.14 •
15.00—		.02—		Oct 9 '34	180.12 •
33.61—		.02—		Oct 10 '34	146.49 •
100.00—		.02—	25.00	Oct 11 '34	71.47 •
29.65—		.02—		Oct 15 '34	41.80 •
			25.00	Oct 15 '34	66.80 •
			35.00	Oct 17 '34	101.80 •
10.00—		.02—		Oct 17 '34	91.78 •
			25.00	Oct 18 '34	116.78 •
			393.03	Oct 18 '34	509.81 •
			45.00	Oct 19 '34	554.81 •
8.02—	25.00—	.04—	500.00	Oct 20 '34	1,021.75 •
260.57—		.02—		Oct 22 '34	761.16 •
			25.00	Oct 22 '34	786.16 •
57.96—		.02—		Oct 23 '34	728.18 •
200.00—		.02—		Oct 24 '34	528.16 •
			99.75	Oct 25 '34	627.91 •
187.05—	18.00—	.04—	25.00	Oct 26 '34	447.82 •
46.12—		.02—		Oct 27 '34	401.68 •
100.00—		.02—	25.00		
			400.00	Oct 30 '34	726.66 •
21.00—		.02—		Oct 31 '34	705.64 •
			260.00	Oct 31 '34	965.64 •
10.25—	38.00—	.06—		Nov 1 '34	761.58 •
20.00—	7.38—	.04—		Nov 2 '34	734.16 •
			25.00	Nov 5 '34	759.16 •
			25.00	Nov 7 '34	784.16 •
			10.00	Nov 8 '34	794.16 •
		Balance Forward	8.21		

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

2. *Chlorophyll* α and β were determined by the method of Arar and Collins (1971).

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 13 A

Date	Checks		Fed. Tax	Deposits	Date	Balance
			Balance Forward	4.23	Nov 13 '34	794.16 S
100.00—			.02—	25.00	Nov 13 '34	694.14 •
				25.00		
41.30—			.02—	25.00	Nov 13 '34	744.14 •
				25.00	Nov 15 '34	702.82 •
50.00—	37.91—		.04—	25.00	Nov 16 '34	727.82 •
				25.00	Nov 19 '34	639.87 •
100.00—			.02—		Nov 19 '34	664.87 •
26.25—	2.00—		.04—		Nov 21 '34	564.85 •
25.00—	13.00—		.04—		Nov 22 '34	536.56 •
5.82—	21.00—	0.00—	.06—		Nov 23 '34	498.52 •
				25.00	Nov 26 '34	469.64 •
				35.00		
				25.00	Nov 26 '34	583.52 •
17.50—	25.00—		.04—		Nov 28 '34	540.98 •
46.60—			.02—	25.00		
				408.75	Nov 30 '34	928.11 •
4.00—			.02—		Dec 3 '34	924.09 •
				25.00	Dec 3 '34	924.09 •
26.49—			.02—		Dec 4 '34	897.58 •
				25.00	Dec 4 '34	922.58 •
225.00—			.02—	25.00		
				310.00	Dec 7 '34	1,032.56 •
2.56—			.02—		Dec 8 '34	1,029.98 •
				25.00	Dec 10 '34	1,054.98 •
28.45—			.02—		Dec 11 '34	1,026.51 •
20.00—			.02—		Dec 11 '34	1,006.49 •
25.00—			.02—		Dec 12 '34	981.47 •
				178.65	Dec 13 '34	1,160.12 •
				75.00	Dec 14 '34	1,235.12 •
8.54—	2.00—		.04—		Dec 15 '34	1,224.54 •
				25.00		
				525.00	Dec 17 '34	1,774.54 •
15.00—			.02—		Dec 18 '34	1,759.52 •
6.86—			.02—		Dec 20 '34	1,752.64 •
				500.00		
				60.00	Dec 20 '34	2,312.64 •
				100.00	Dec 21 '34	2,412.64 •
				25.00	Dec 24 '34	2,437.64 •
20.00—			.02—	677.00	Dec 24 '34	
				25.00	Dec 24 '34	3,119.62 •
9.22—	77.00—	25.00—	.06—		Dec 26 '34	3,008.34 •
2.00—			.02—		Dec 28 '34	3,006.32 •
200.00—			.02—		Dec 28 '34	2,806.30 •
				25.00	Dec 29 '34	2,831.30 •
25.10—			.02—		Dec 31 '34	2,806.18 •
				25.00	Dec 31 '34	2,831.18 •
58.18—					Jan 3 '35	2,773.00 •
12.50—	300.00—				Jan 3 '35	2,460.50 •
				240.00	Jan 4 '34	2,700.50 •
			Balance Forward	4.23		

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

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LEDGER

LOUIS ROTH

No. 13 B

Date	Checks	Fed. Tax Balance Forward	Deposits	Date	Balance
20.00—				Jan 5 '35	2,700.50 •
103.65—				Jan 5 '35	2,680.50 •
				Jan 7 '35	2,576.85 •
30.82—			25.00	Jan 7 '35	2,601.85 •
				Jan 8 '35	2,571.03 •
25.00—			500.00	Jan 9 '35	3,071.03 •
10.00—				Jan 10 '35	3,046.03 •
				Jan 11 '35	3,036.03 •
			825.00		
			25.00	Jan 14 '35	3,886.03 •
20.00—	68.00—	137.50—		Jan 15 '35	3,660.53 •
31.69—				Jan 15 '35	3,628.84 •
1,650.00—				Jan 16 '35	1,978.84 •
65.60—				Jan 17 '35	1,913.24 •
20.00—				Jan 18 '35	1,893.24 •
			10.00	Jan 18 '35	1,903.24 •
8.15—				Jan 19 '35	1,895.09 •
			22.40	Jan 19 '35	1,917.49 •
650.00—				Jan 21 '35	1,267.49 •
5.00—	13.00—			Jan 22 '35	1,249.49 •
1,750.00—				Jan 24 '35	500.51OD
			500.00	Jan 24 '35	.51OD
1.57—			500.00	Jan 25 '35	499.49 •
5.00—			25.00	Jan 28 '35	522.92 •
				Jan 30 '35	517.92 •
20.00—			260.00	Feb 1 '35	777.92 •
21.25—				Feb 2 '35	757.92 •
20.00—				Feb 9 '35	736.67 •
10.00—	32.12—			Feb 13 '35	716.67 •
				Feb 14 '35	674.55 •
15.00—	40.00—		500.00	Feb 15 '35	1,174.55 •
2.00—				Feb 16 '35	1,119.55 •
2.00—				Feb 19 '35	1,117.55 •
15.00—				Feb 20 '35	1,115.55 •
14.00—				Feb 23 '35	1,100.55 •
10.00—	8.57—	17.75—		Feb 25 '35	1,086.55 •
			500.00	Feb 27 '35	1,650.23 •
10.54—				Feb 27 '35	1,550.23 •
4.61—			240.00	Feb 28 '35	1,539.69 •
20.00—				Feb 28 '35	1,775.08 •
			25.00	Mar 4 '35	1,755.08 •
19.08—				Mar 5 '35	1,780.08 •
20.00—				Mar 6 '35	1,761.00 •
22.75—				Mar 7 '35	1,741.00 •
1.85—				Mar 12 '35	1,718.25 •
20.00—				Mar 19 '35	1,716.40 •
			250.00	Mar 19 '35	1,696.40 •
6.91—				Mar 19 '35	1,946.40 •
5.00—	4.07—			Mar 20 '35	1,939.49 •
600.00—				Mar 21 '35	1,930.42 •
				Mar 26 '35	1,330.42 •
			Balance Forward		

‡ Notation in longband.

1871

1872

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 14 A

Date	Checks	Fed. Tax Balance Forward	Deposits	Date	Balance
15.00—			50.00	Mar 26 '35	1,330.42 S
15.00—				Mar 26 '35	1,365.42 •
1,000.00—				Mar 27 '35	1,350.42 •
				Mar 28 '35	350.42 •
			50.00		
			200.00	Mar 29 '35	600.42 •
50.00—				Apr 1 '35	550.42 •
30.00—	15.00—			Apr 2 '35	505.42 •
15.00—			25.00		
			25.00	Apr 3 '35	540.42 •
			50.00	Apr 4 '35	590.42 •
15.00—	10.00—	10.85—		Apr 6 '35	554.57 •
27.01—				Apr 6 '35	527.56 •
20.00—				Apr 9 '35	507.56 •
30.76—				Apr 12 '35	476.80 •
20.00—				Apr 12 '35	456.80 •
52.50—				Apr 16 '37	404.30 •
36.74—				Apr 17 '35	367.56 •
20.00—				Apr 17 '35	347.56 •
7.70—				Apr 19 '37	339.86 •
5.30—				Apr 23 '35	334.56 •
15.00—				Apr 23 '35	319.56 •
12.36—				Apr 25 '35	307.20 •
15.00—				Apr 26 '35	292.20 •
			50.00	Apr 30 '35	342.20 •
10.00—				May 2 '35	332.20 •
			260.00	May 2 '35	592.20 •
			230.00	May 3 '35	822.20 •
42.77—				May 7 '35	779.43 •
18.95—				May 8 '35	760.48 •
10.00—				May 9 '35	750.48 •
2.75—	22.82—			May 10 '35	724.91 •
			2,331.90†	May 13 '35	3,056.81 •
2,331.90—†				May 13 EC	724.91 •
3.50—				May 13 '35	721.41 •
20.00—	25.00—		50.00	May 14 '35	726.41 •
20.00—				May 20 '35	706.41 •
161.10—				May 23 '35	545.31 •
10.00—				May 27 '35	535.31 •
21.75—				May 28 '35	513.56 •
			260.00	May 28 '35	773.56 •
60.00—	22.00—			May 29 '35	691.56 •
35.00—				May 31 '35	656.56 •
15.00—				Jun 1 '35	641.56 •
20.00—				Jun 4 '35	621.56 •
51.74—				Jun 4 '35	569.82 •
57.55—				Jun 5 '35	512.27 •
20.00—			52.55	Jun 5 '35	544.82 •
25.00—				Jun 7 '35	519.82 •
17.17—				Jun 10 '35	502.65 •
5.00—				Jun 11 '35	497.65 •
15.00—				Jun 11 '35	482.65 •
25.82—				Jun 12 '35	456.83 •
30.00—				Jun 12 '35	426.83 •
			Balance Forward	477	

† Figures circled in pencil.

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 14 B

Date	Checks	Fed. Tax	Deposits	Date	Balance
		Balance Forward	\$28	Jun 13 '35	426.83 S
S 15.00—				Jun 13 '35	411.83 *
20.00—				Jun 20 '35	391.83 *
10.00—				Jan 25 '35	381.83 *
7.84—				Jun 26 '35	373.99 *
			200.00	Jan 27 '35	573.99 *
3.89—				Jul 1 '35	570.10 *
2.39—			25.00	Jul 1 '35	592.71 *
32.51—				Jul 2 '35	560.20 *
20.00—				Jul 2 '35	540.20 *
45.00—				Jul 6 '35	495.20 *
28.11—				Jul 6 '35	467.09 *
			22.40	Jul 8 '35	489.49 *
30.00—				Jul 10 '35	Hold‡ 459.49 *
27.50—			18,260.94	Jul 10 '35	18260‡ 18,692.93 *
19.60—				Jul 11 '35	7/11‡ 18,673.33 *
18,260.94—	5.00—			Jul 11 '35	No. 9‡ 407.39 *
7.88—	40.00—			Jul 16 '35	359.51 *
7.50—	15.00—	20.00—		Jul 17 '35	317.01 *
17.50—	3.50—			Jul 18 '35	296.01 *
15.00—				Jul 24 '35	Hold‡ 281.01 *
15.00—				Jul 24 '35	1300.00‡ 266.01 *
2.50—				Jul 26 '35	7-27‡ 263.51 *
1,300.00—			1,230.00	Jul 27 '35	No. 21‡ 193.51 *
20.00—				Jul 29 '35	173.51 *
25.00—	10.00—		1,740.00	Aug 1 '35	1,878.51 *
45.00—	46.67—			Aug 2 '35	1,786.84 *
3.12—				Aug 5 '35	1,783.72 *
1,740.00—	10.00—		400.00	Aug 5 '35	433.72 *
24.29—	17.50—			Aug 6 '35	391.93 *
27.44—	20.00—			Aug 6 '35	344.49 *
247.18—				Aug 7 '35	97.31 *
17.77—				Aug 12 '35	79.54 *
			47.22	Aug 12 '35	126.76 *
47.22—				Aug 12 EC	79.54 *
20.77—				Aug 14 '35	58.77 *
20.00—				Aug 14 '35	38.77 *
101.90—				Aug 15 '35	63.130D
11.34—	2.50—			Aug 16 '35	76.970D
			240.00	Aug 16 '35	163.03 *
556.00—			5,056.00	Aug 19 '35	4,663.03 *
10.00—				Aug 19 '35	4,653.03 *
2,300.00—			2,300.00	Aug 20 '35	Hold‡ 4,653.03 *
20.00—	27.00—			Aug 21 '35	\$23.00‡ 4,606.03 *
20.00—				Aug 21 '35	8-14‡ 4,586.03 *
1,955.00—				Aug 22 '35	No. 21‡ 2,631.03 *
40.00—				Aug 23 '35	2,591.03 *
20.00—				Aug 26 '35	2,571.03 *
41.73—				Aug 27 '35	2,529.30 *
150.00—	20.00—			Aug 20 '35	2,359.30 *
6.70—				Aug 31	2,352.60 *
10.82—				Aug 31 '35	2,341.78 *
50.00—				Sep 3 '35	2,291.78 S
			Balance Forward	\$27	

‡ Notations in longhand.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

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Q. 2nd. also.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 15 A

Date	Checks	Deposits	Date	Balance
		Balance Forward 828	Sep 3 '35	2,291.78 *
40.00—			Sep 3 '35	2,251.78 *
35.58—		50.00†	Sep 3 EC	2,301.78 *
9.90—‡			7 '35	2,266.20 *
			7 '35	2,256.30 *
22.90—		9.90†	Sep 7 EC	2,266.20 *
61.78—‡			Sep 10 '35	2,243.30 *
20.00—			Sep 12 '35	2,181.52 *
			Sep 12 '35	2,161.52 *
		61.78†	Sep 12 EC	2,223.30 *
		260.00	Sep 12 '35	2,483.30 *
22.61—			Sep 14 '35	2,460.69 *
1,500.00—			Sep 14 '35	960.69 *
15.00—			Sep 18 '35	945.69 *
350.00—		100.00	Sep 18 '35	1,005.69 *
			Sep 19 '35	456.69
50.00—			Sep 19 EC	695.69 *
2.47—			Sep 20 '35	645.69 *
80.00—			Sep 23 '35	643.22 *
60.00—	31.00—		Sep 24 '35	563.22 *
200.00—			Sep 25 '35	472.22 *
65.00—			Sep 30 '35	272.22 *
			Oct 2 '35	207.22 *
		5,964.00	Oct 4 '35	6,171.22 *
50.00—			Oct 8 '35	6,121.22 *
		200.00	Oct 11 '35	6,321.22 *
7.73—			Oct 14 '35	6,313.49 *
143.50—			Oct 17 '35	6,169.99 *
		140.00	Oct 17 '35	6,309.99 *
		180.00	Oct 18 '35	6,489.99 *
600.00—			Oct 19 '35	5,880.99 *
5,500.00—			Oct 21 '35	389.99 *
100.00—			Oct 23 '35	289.99 *
187.05—			Oct 24 '35	102.94 *
		100.00	Oct 24 '35	202.94 *
		300.00	Oct 28 '35	502.94 *
80.00—		2,462.50		
		99.40	Oct 29 '35	2,984.84 *
23.48—			Oct 30 '35	2,961.36 *
22.41—			Oct 31 '35	2,938.95 *
2,561.00—			Oct 31 '35	377.05 *
1.00—			Nov 1 '35	376.05 *
1.80—‡			Nov 2 '35	374.25 *
29.96—		57.73	Nov 2 '35	256190‡ # 24‡ A‡
		1.80†	Nov 2 EC	403.82 *
13.90—			Nov 5 '35	389.92 *
50.00—			Nov 5 '35	339.92 *
21.86—			Nov 7 '35	18.06 *
9.02—	75.00—	260.00	Nov 7 '35	494.04 *
30.00—			Nov 8 '35	464.04 *
35.90—			Nov 9 '35	428.14 *
190.71—			Nov 9 '35	237.43 *
		Balance Forward 828		

† Figures circled in pencil.

‡ Notations in longhand.

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 15 B

Date	Checks	Deposits	Date	Balance
		Balance Forward \$27		
		357.57	Nov 13 '35	595.00 *
		100.00	Nov 16 '35	695.00 *
100.00—			Nov 16 EC	595.00 *
150.00—			Nov 18 '35	445.00 *
75.00—			Nov 26 '35	370.00 *
75.00—			Dec 2 '35	295.00 *
50.00—			Dec 2 '35	245.00 *
			Dec 3 '35	571.17 *
157.16—		326.17	Dec 3 '35	414.01 *
168.25—			Dec 4 '35	245.76 *
			Dec 4 '35	275.01 *
2.00—		29.25	Dec 5 '35	273.01 *
28.56—			Dec 5 '35	484.45 *
1,500.00—		240.00	Dec 7 '35	184.45 *
		1,200.00	Dec 10 '35	1,184.45 *
		1,000.00	Dec 11 '35	184.45 *
1,000.00—			Dec 14 '35	124.45 *
60.00—			Dec 16 '35	122.45 *
2.00—			Dec 17 '35	67.45 *
55.00—			Dec 18 '35	341.73 *
1,000.00—		1,274.28	Dec 19 '35	321.73 *
20.00—†			EC	Hold‡ 341.73 *
		20.00†	Dec 20 '35	\$900.‡ 339.67 *
2.06—			Dec 20 '35	12/20‡ 439.67 *
900.00—		1,000.00	Dec 21 '35	No. 17‡ 389.67 *
50.00—			Dec 23 '35	264.67 *
125.00—			Dec 24 '35	225.72 *
38.95—			Dec 24 '35	159.72 *
41.00—	25.00—		Dec 26 '35	139.72 *
20.00—			Dec 28 '35	119.72 *
20.00—			Dec 31 '35	72.230D
191.95—			Dec 31 '35	927.77 *
		1,000.00	Dec 31 '35	106.32 *
400.00—	421.45—		Jan 2 '36	61.82 *
44.50—			Jan 3 '36	308.180D
370.00—			Jan 3 '36	48.180D
		260.00	Jan 8 '36	401.82 *
		450.00	Jan 9 '36	240.07 *
75.00—	86.75—		Jan 9 '36	347.23 *
50.00—		157.16	Jan 10 '36	227.23 *
50.00—	7.50—	62.50—	Jan 10 '36	217.61 *
9.62—			Jan 11 '36	148.54 *
25.00—	44.07—		Jan 14 '36	128.54 *
20.00—			Jan 16 '36	265.54 *
13.00—		150.00	Jan 17 '36	240.54 *
25.00—			Jan 18 '36	171.79 *
18.75—	50.00—		Jan 18 '36	151.79 *
20.00—			Jan 20 '36	Hold‡ 101.79 *
50.00—			Jan 23 '35	\$1792‡ 99.88 *
1.91—			1/23‡	
		600.00	Jan 23 '35	No. 21‡ 2,491.88 *
		1,792.00	Jan 23 '35	697.88 *
1,792.00—	2.00—			7944‡
		Balance Forward \$27		1-24‡
				# 21‡

† Figures circled in pencil.

‡ Notations in margin.

1870-1871

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 16 A

Date	Checks	Balance	Forward	Deposits	Date	Balance
50.00—				125	Jan 24 '35	697.88 S
					Jan 24 '35	647.88 *
7,944.00—	300.00—			7,944.00	Jan 24 '36	8,591.88 *
33.53—	30.00—				Jan 24 '36	#21‡ 347.88 *
				100.00	Jan 28 '36	1-24‡ 284.35 *
20.00—					Jan 29 '36	384.35 *
50.00—					Jan 30 '36	364.35 *
10.00—					Jan 30 '36	314.35 *
				240.00	Jan 31 '36	304.35 *
15.00—	8.33—				Jan 31 '36	544.35 *
33.36—					Feb 1 '36	521.02 *
33.60—				248.00	Feb 4 '36	487.66 *
175.00—					Feb 4 '36	702.06 *
25.00—					Feb 6 '36	527.06 *
				183.00	Feb 7 '36	502.06 *
27.08—					Feb 8 '36	685.06 *
20.00—					Feb 13 '36	657.98 *
1.45—					Feb 17 '36	637.98 *
500.00—					Feb 18 '36	636.53 *
20.00—					Feb 25 '36	136.53 *
20.00—					Feb 25 '36	116.53 *
17.50—					Feb 26 '36	96.53 *
50.00—					Feb 27 '36	79.03 *
				1,160.00	Feb 29 '36	29.03 *
940.00—					Mar 2 '36	1,189.03 *
10.00—					Mar 3 '36	249.03 *
Mar 9 '36	13.09—				Mar 3 '36	239.03 *
Mar 9 '36	12.50—				Mar 9 '36	225.94 *
Mar 10 '36	20.00—				Mar 9 '36	213.44 *
Mar 11 '36	16.09—				Mar 10 '36	193.44 *
				5,100.00	Mar 11 '36	177.35 *
Mar 12 '36	5,100.00—				Mar 12 '36	5,277.35 *
Mar 14 '36	40.24—				Mar 12 '36	177.35 *
Mar 16 '36	310.00—				Mar 14 '36	137.11 *
Mar 16 '36	20.00—			650.00	Mar 16 '36	172.890D
Mar 16 '36	2.68—				Mar 16 '36	57.11 *
Mar 19 '36	20.00—			1,900.00	Mar 18 '36	454.43 *
				260.00	[Penciled notation illegible]	
Mar 19 '37	60.00—				Mar 19 '36	2,594.4 *
Mar 20 '36	600.00—				Mar 19 '36	2,534.43 *
Mar 21 '36	1,747.50—				Mar 20 '36	1,934.43 *
Mar 23 '36	55.38—				Mar 21 '36	186.93 *
Mar 23 '36	20.00—				Mar 23 '36	131.55 *
				5,950.00	Mar 23 '36	111.55 *
Mar 28 '36	25.00—				Mar 25 '36	6,061.55 *
					Mar 28 '36	6,036.55 *

Transferred to New Ledger Sheet
Close of Business Mar '01, 1936

‡ Longhand notation.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

[Reverse side of sheet not filled in]

1. The first part of the book

is the

second part of the

third part of the

fourth part of the

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

818 S. Broadway,

Los Angeles, Calif.

No. 1 A

Date	Checks		Deposits		Date	Balance
			Balance Forward	187		
Apr 1 '36	5.00—				Mar 31 '36	6,036.55
Apr 2 '36	25.00—				Apr 1 '36	6,031.55 *
Apr 2 '36	26.39—				Apr 2 '36	6,006.55 *
Apr 2 '36	23.19—				Apr 2 '36	5,980.16 *
					Apr 2 '36	5,956.97 *
				200.00	Apr 3 '36	6,156.97 *
Apr 6 '36	68.20—				Apr 6 '36	6,088.77 *
Apr 7 '36	3.77—	11.78—			Apr 7 '36	6,073.22 *
Apr 7 '36	300.00—	873.00—			Apr 7 '36	4,900.22 *
				45,650.00	Apr 10 '36	50,550.22 *
Apr 13 '36	✓ 20.00—				Apr 13 '36	50,530.22 *
Apr 16 '36	15,000.00—✓				Apr 16 '36	35,530.22 *
Apr 18 '36	20.00—				Apr 18 '36	35,510.22 *
Apr 18 '36	100.00—		800.00		Apr 18 '36	36,210.22 *
Apr 21 '36	20.00—	250.00—			Apr 21 '36	35,940.22 *
Apr 21 '36	6,000.00—		300.00		Apr 21 '36	30,240.22 *
Apr 22 '36	799.57—	30,700.00—✓	200.00			
			5,000.00		Apr 22 '36	3,940.65 *
Apr 23 '36	15.00—	41.86—			Apr 23 '36	3,883.79 *
Apr 23 '36	100.00—	50.00—			Apr 23 '36	3,733.79 *
Apr 23 '36	3,075.00—				Apr 23 '36	† 658.79 *
Apr 25 '36	20.00—				Apr 25 '36	† 638.79 *
				450.00	Apr 25 '36	† 1,088.79 *
Apr 27 '36	25.00—	300.00—			Apr 27 '36	763.79 *
Apr 27 '36	100.00—		500.00		Apr 27 '36	1,163.79 *
28 '36	25.00—				28 '36	1,138.79 *
Apr 29 '36	2,400.00—				Apr 29 '36	1,261.210D
			1,654.00		Apr 29 '36	392.79 *
May 9 '36	5.05—				May 9 '36	387.74 *
			1,379.00		May 12 '36	1,766.74 *
May 14 '36	24.76—				May 14 '36	1,741.98 *
May 18 '36	50.70—				May 18 '36	1,691.28 *
May 19 '36	1,000.00—		1,000.00		May 19 '36	1,691.28 *
May 20 '36	7.70—		150.00		May 20 '36	5-19-36† 1,833.58 *
May 21 '36	42.85—	930.00—	7.55—		May 21 '36	No. 21† 953.18 *
May 23 '36	161.10—				May 23 '36	692.08 *
				835.30	May 26 '36	1,527.38 *
May 29 '36	21.70—				May 29 '36	1,505.68 *
				518.63	Jun 1 '36	2,024.31 *
Jun 10 '36	7.85—				Jun 10 '36	2,016.46 *
Jun 13 '36	25.56—				Jun 13 '36	1,990.90 *
Jun 15 '36	12.50—				Jun 15 '36	1,978.40 *
Jun 16 '36	90.00—				Jun 16 '36	1,888.40 *
Jun 17 '36	800.00—				Jun 17 '36	1,088.40 *
Jun 18 '36	300.00—				Jun 18 '36	788.40 *
Jun 25 '36	10.00—				Jun 25 '36	778.40 *
				450.00	Jul 1 '36	1,228.40 *
Jul 3 '36	23.00—		3,850.00		Jul 3 '36	5,078.40 *
				57.50	Jul 3 '36	5,055.40 *
Jul 7 '36	82.90—				Jul 6 '36	5,112.90 *
Jul 8 '36	4.40—				Jul 7 '36	5,030.00 *
				39.66	Jul 8 '36	5,025.60 *
Jul 9 '36	450.00—				Jul 8 '36	5,065.26 *
Jul 10 '36	250.00—	34.40—			Jul 9 '36	4,615.26 *
Jul 11 '36	35.00—				Jul 10 '36	4,331.26 *
Jul 13 '36	15.00—				Jul 11 '36	4,296.26 *
Jul 16 '36	11.04—				Jul 13 '36	4,281.26 *
Jul 18 '36	13.96—				Jul 16 '36	4,270.22 *
Jul 20 '36	15.03—				Jul 18 '36	4,256.26 *
Jul 25 '36	15.00—				Jul 20 '36	4,241.23 *
Aug 3 '36	38.16—				Jul 25 '36	4,226.23 *
Aug 4 '36				84.00	Aug 3 '36	4,188.07 *
			Balance Forward	187	Aug 4 '36	4,272.07 *

† Writing over date column illegible.

† Notation in pencil.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

1. *Phragmites australis* (Cav.) Trin. ex Steud.
 2. *Scirpus americanus* L.
 3. *Spartina patens* (Muhl.) B. & P.
 4. *Spartina patens* (Muhl.) B. & P.
 5. *Spartina patens* (Muhl.) B. & P.
 6. *Spartina patens* (Muhl.) B. & P.
 7. *Spartina patens* (Muhl.) B. & P.
 8. *Spartina patens* (Muhl.) B. & P.
 9. *Spartina patens* (Muhl.) B. & P.
 10. *Spartina patens* (Muhl.) B. & P.

LEDGER

MR. LOUIS ROTH,
818 S. Broadway,
Los Angeles, California

No. B

Date	Checks	Deposits	Date	Balance
		Balance Forward 427		
Aug 6 '36	100.00—		Aug 6 '36	4,272.07 S
Aug 7 '36	25.00—		Aug 6 '36	
Aug 10 '36	20.00—		Aug 6 '36	4,172.07 •
Aug 11 '36	100.00—		Aug 7 '36	4,147.07 •
Aug 12 '36	27.66—		Aug 10 '36	4,127.07 •
Aug 12 '36		12.36—†	Aug 11 '36	4,027.07 •
Aug 15 '36	31.57—		Aug 12 '36	3,987.05 •
Aug 22 '36	1,000.00—	12.36†	Aug 12 '36	3,999.41 •
Aug 25 '36	830.00—		Aug 15 '36	3,967.84 •
Aug 26 '36	20.00—		Aug 22 '36	2,967.84 •
Aug 26 '36		500.00	Aug 24 '36	2,137.84 •
		103.27	Aug 26 '36	2,117.84 •
		16.38	Aug 26 '36	2,617.84 •
Sep 8 '36	13.10—		Aug 28 '36	2,721.11 •
		500.00	Sep 5 '36	2,737.49 •
Sep 12 '36	50.00—		Sep 8 '36	2,724.39 •
Sep 15 '36	36.00—		Sep 10 '36	3,224.39 •
Sep 19 '36	50.00—		Sep 12 '36	3,174.39 •
Sep 24 '36	24.52—		Sep 15 '36	3,138.39 •
Sep 24 '36		101.23	Sep 19 '36	3,088.39 •
Sep 25 '36	1,042.50—		Sep 24 '36	3,063.87 •
		200.00	Sep 24 '36	3,165.10 •
Sep 29 '36	52.00—		Sep 25 '36	2,122.60 •
		[In longhand]: Term Sav. 1,035.00†	Sep 25 '36	2,322.60 •
Oct 1 '36	1,035.00—†		Sep 29 '36	2,270.60 •
Oct 3 '36	30.00—		Oct 1 '36	3,305.60 •
Oct 6 '36	11.00—		Oct 1 EC	2,270.60 •
Oct 10 '36	5.00—		Oct 3 '36	2,240.60 •
Oct 13 '36	500.00—	54.11—	Oct 6 '36	2,229.60 •
Oct 14 '36	12.70—		Oct 10 '36	2,224.60 •
Oct 15 '36	11.18—		Oct 13 '36	1,670.49 •
Oct 15 '36	50.00—		Oct 14 '36	1,657.79 •
Oct 16 '36		1,000.00	Oct 15 '36	1,646.61 •
Oct 20 '36	25.00—		Oct 15 '36	1,596.61 •
Oct 20 '36	20.00—		Oct 16 '36	2,596.61 •
Oct 22 '36	1,000.00—		Oct 20 '36	2,571.61 •
Oct 28 '36	20.00—	10.00—	Oct 20 '36	2,551.61 •
Oct 30 '36	10.00—		Oct 22 '36	1,551.61 •
Nov 2 '36	187.05—		Oct 28 '36	1,521.61 •
Nov 5 '36	33.71—		Oct 30 '36	1,511.61 •
Nov 6 '36	50.00—	500.00—	Nov 2 '36	1,324.56 •
Nov 7 '36	21.50—		Nov 5 '36	1,290.85 •
		2,000.00	Nov 6 '36	740.85 •
Nov 9 '36	50.00—	2,000.00	Nov 7 '36	719.35 •
Nov 10 '36	70.99—	250.00—	Nov 7 '36	2,719.35 •
Nov 10 '36	50.00—		Nov 9 '36	3,669.35 •
		Balance Forward 427	Nov 10 '36	848.36 •
			Nov 10 '36	798.36 •

† Figures circled in pencil.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

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(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 2 A

Date	Checks	Deposits	Date	Balance
		Balance Forward 423		
Nov 12 '36	2.00—		Nov 12 '36	798.36
Nov 13 '36	36.05—		Nov 12 '36	768.49 *
Nov 13 '36	25.00—		Nov 13 '36	732.44 *
Nov 16 '36	2.06—		Nov 13 '36	707.44 *
			Nov 16 '36	705.38 *
Nov 18 '36	100.00—	150.00	Nov 16 '36	855.38 *
		2,000.00	Nov 18 '36	755.38 *
		4,800.00		
Nov 19 '36	4,800.00—	1,600.00—	Nov 19 '36	6,200‡ 7,555.38 *
Nov 21 '36	42.00— E C		Nov 19 '36	21‡ 1,155.38 *
		E C 42.00	Nov 21 '36	1-19‡ 1,143.38 *
Nov 24 '36	10.00—	1,000.00	Nov 21 '36	1,155.38 *
			Nov 24 '36	1,145.38 *
Nov 27 '36	38.46—		Nov 25 '36	2,145.38 *
Nov 27 '36	1,291.71—	15.00—	Nov 27 '36	2,106.92 *
Dec 2 '36	92.50—		Nov 27 '36	800.21 *
Dec 3 '36	17.00—		Dec 2 '36	707.71 *
Dec 8 '36	50.00—	16.38	Dec 3 '36	690.71 *
Dec 17 '36	100.00—		Dec 8 '36	657.09 *
Dec 18 '36	100.00—		Dec 17 '36	557.09 *
Dec 21 '36	78.18—		Dec 18 '36	457.09 *
Dec 22 '36	28.50—		Dec 21 '36	378.91 *
Dec 23 '36	50.00—		Dec 22 '36	350.41 *
Dec 26 '36	75.00—		Dec 23 '36	300.41 *
Dec 28 '36	20.00—		Dec 26 '36	225.41 *
Dec 31 '36	13.00—	75.00	Dec 28 '36	205.41 *
			Dec 31 '36	192.41 *
Jan 4	45.00—		Dec 31 '36	267.41 *
Jan 4	15.00—		Jan 4	4,410.75 *
Jan 5	50.00—	50.00—	Jan 4	252.41 *
Jan 9	25.00—	400.00	Jan 5	152.41 *
Jan 11	50.00—		Jan 9	527.41 *
Jan 12 '37	45.00—		Jan 11	477.41 *
Jan 13 '37	25.00—	38.00—	Jan 12 '37	432.41 *
		1,400.00	Jan 13 '37	369.41 *
Jan 16 '37	1,500.00—pt	pt 1,500.00	Jan 14 '37	1,769.41 *
			Jan 16 '37	269.41 *
Jan 18 '37	1,500.00—		Jan 18 '37	1,769.41 *
Jan 19 '37	18.38—		Jan 18 '37	269.41 *
Jan 19 '37	50.00—		Jan 19 '37	251.03 *
Jan 25 '37	25.00—		Jan 19 '37	201.03 *
Jan 27 '37	36.34—	300.00	Jan 25 '37	176.03 *
Jan 28 '37	84.75—		Jan 27 '37	389.69 *
Jan 29 '37	58.32—	45.19—	Jan 28 '37	304.94 *
Jan 30 '37	50.00—		Jan 29 '37	201.43 *
Feb 1 '37	10.00—		Jan 30 '37	151.43 *
Feb 1 '37	50.00—		Feb 1 '37	141.43 *
Jan 4 '37	50.00—		Feb 1 '37	91.43 *
Feb 11 '37	21.19—		Jan 4 '37	41.43 *
Feb 13 '37	2.06—		Feb 11 '37	20.24 *
Feb 19 '37	12.00—		Feb 13 '37	18.18 *
Feb 23 '37	50.00—	1,600.00	Feb 19 '37	6.18 *
Feb 23 '37	100.00—		Feb 23 '37	1,556.18 *
Feb 24 '37	25.00—		Feb 23 '37	1,456.18 *
Feb 25 '37	100.00—		Feb 24 '37	1,431.18 *
			Feb 25 '37	1,331.18 S
		Balance Forward 423		

‡ Notations in margin.

1. *Phragmites* (common)
 2. *Scirpus* (common)
 3. *Spartina* (common)
 4. *Distichlis* (common)
 5. *Eleocharis* (common)
 6. *Cyperus* (common)
 7. *Eleocharis* (common)
 8. *Phragmites* (common)
 9. *Scirpus* (common)
 10. *Spartina* (common)
 11. *Distichlis* (common)
 12. *Eleocharis* (common)
 13. *Cyperus* (common)
 14. *Eleocharis* (common)
 15. *Phragmites* (common)
 16. *Scirpus* (common)
 17. *Spartina* (common)
 18. *Distichlis* (common)
 19. *Eleocharis* (common)
 20. *Cyperus* (common)
 21. *Eleocharis* (common)
 22. *Phragmites* (common)
 23. *Scirpus* (common)
 24. *Spartina* (common)
 25. *Distichlis* (common)
 26. *Eleocharis* (common)
 27. *Cyperus* (common)
 28. *Eleocharis* (common)
 29. *Phragmites* (common)
 30. *Scirpus* (common)
 31. *Spartina* (common)
 32. *Distichlis* (common)
 33. *Eleocharis* (common)
 34. *Cyperus* (common)
 35. *Eleocharis* (common)
 36. *Phragmites* (common)
 37. *Scirpus* (common)
 38. *Spartina* (common)
 39. *Distichlis* (common)
 40. *Eleocharis* (common)
 41. *Cyperus* (common)
 42. *Eleocharis* (common)
 43. *Phragmites* (common)
 44. *Scirpus* (common)
 45. *Spartina* (common)
 46. *Distichlis* (common)
 47. *Eleocharis* (common)
 48. *Cyperus* (common)
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 59. *Spartina* (common)
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 62. *Cyperus* (common)
 63. *Eleocharis* (common)
 64. *Phragmites* (common)
 65. *Scirpus* (common)
 66. *Spartina* (common)
 67. *Distichlis* (common)
 68. *Eleocharis* (common)
 69. *Cyperus* (common)
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 88. *Distichlis* (common)
 89. *Eleocharis* (common)
 90. *Cyperus* (common)
 91. *Eleocharis* (common)
 92. *Phragmites* (common)
 93. *Scirpus* (common)
 94. *Spartina* (common)
 95. *Distichlis* (common)
 96. *Eleocharis* (common)
 97. *Cyperus* (common)
 98. *Eleocharis* (common)
 99. *Phragmites* (common)
 100. *Scirpus* (common)
 101. *Spartina* (common)
 102. *Distichlis* (common)
 103. *Eleocharis* (common)
 104. *Cyperus* (common)
 105. *Eleocharis* (common)
 106. *Phragmites* (common)
 107. *Scirpus* (common)
 108. *Spartina* (common)
 109. *Distichlis* (common)
 110. *Eleocharis* (common)
 111. *Cyperus* (common)
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 113. *Phragmites* (common)
 114. *Scirpus* (common)
 115. *Spartina* (common)
 116. *Distichlis* (common)
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 118. *Cyperus* (common)
 119. *Eleocharis* (common)
 120. *Phragmites* (common)
 121. *Scirpus* (common)
 122. *Spartina* (common)
 123. *Distichlis* (common)
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 125. *Cyperus* (common)
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 127. *Phragmites* (common)
 128. *Scirpus* (common)
 129. *Spartina* (common)
 130. *Distichlis* (common)
 131. *Eleocharis* (common)
 132. *Cyperus* (common)
 133. *Eleocharis* (common)
 134. *Phragmites* (common)
 135. *Scirpus* (common)
 136. *Spartina* (common)
 137. *Distichlis* (common)
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 139. *Cyperus* (common)
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 142. *Scirpus* (common)
 143. *Spartina* (common)
 144. *Distichlis* (common)
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 148. *Phragmites* (common)
 149. *Scirpus* (common)
 150. *Spartina* (common)
 151. *Distichlis* (common)
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 156. *Scirpus* (common)
 157. *Spartina* (common)
 158. *Distichlis* (common)
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 161. *Eleocharis* (common)
 162. *Phragmites* (common)
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 164. *Spartina* (common)
 165. *Distichlis* (common)
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 167. *Cyperus* (common)
 168. *Eleocharis* (common)
 169. *Phragmites* (common)
 170. *Scirpus* (common)
 171. *Spartina* (common)
 172. *Distichlis* (common)
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 174. *Cyperus* (common)
 175. *Eleocharis* (common)
 176. *Phragmites* (common)
 177. *Scirpus* (common)
 178. *Spartina* (common)
 179. *Distichlis* (common)
 180. *Eleocharis* (common)
 181. *Cyperus* (common)
 182. *Eleocharis* (common)
 183. *Phragmites* (common)
 184. *Scirpus* (common)
 185. *Spartina* (common)
 186. *Distichlis* (common)
 187. *Eleocharis* (common)
 188. *Cyperus* (common)
 189. *Eleocharis* (common)
 190. *Phragmites* (common)
 191. *Scirpus* (common)
 192. *Spartina* (common)
 193. *Distichlis* (common)
 194. *Eleocharis* (common)
 195. *Cyperus* (common)
 196. *Eleocharis* (common)
 197. *Phragmites* (common)
 198. *Scirpus* (common)
 199. *Spartina* (common)
 200. *Distichlis* (common)

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 2 B

Date	Checks	Deposits		Date	Balance
		Balance	Forward to		
			84.75	Feb 25 '37	1,331.18 S
Feb 27 '37	20.09—			Feb 25 '37	1,415.93 *
Mar 1 '37	16.43—	21.17—	11.28—	Feb 27 '37	1,395.84 *
Mar 1 '37	188.40—			Mar 1 '37	1,346.96 *
Mar 3 '37	100.00—			Mar 1 '37	1,158.56 *
Mar 3 '37	41.44—EC			Mar 3 '37	1,058.56 *
			16.38		
Mar 4 '37	25.25—		EC 44.44	Mar 3 '37	1,074.94 *
Mar 8 '37	50.00—			Mar 4 '37	1,049.69 *
Mar 8 '37	25.00—			Mar 8 '37	999.69 *
Mar 9 '37	4.64—			Mar 8 '37	974.69 *
Mar 10 '37	18.75—			Mar 9 '37	970.05 *
Mar 12 '37	40.00—			Mar 10 '37	951.30 *
Mar 13 '37	50.00—		15,000.00	Mar 12 '37	911.30 *
Mar 16 '37	20.60—			Mar 13 '37	15,861.30 *
Mar 16 '37	625.00—			Mar 16 '37	15,840.70 *
Mar 17 '37	11.28—	77.00—		Mar 16 '37	15,215.70 *
			1,067.43	Mar 17 '37	15,127.42 *
Mar 18 '37	1,275.00—			Mar 17 '37	16,734.85 *
Mar 18 '37	50.00—			Mar 18 '37	15,459.85 *
Mar 19 '37	46.35—			Mar 18 '37	15,409.85 *
Mar 20 '37	15,000.00—			Mar 19 '37	15,363.50 *
Mar 23 '37	5.00—			Mar 20 '37	363.50 *
Mar 27 '37	22.75—			Mar 23 '37	358.50 *
Mar 30 '37	10.00—			Mar 27 '37	335.75 *
Mar 30 '37	38.87—		200.00	Mar 30 '37	325.75 *
			10.00	Mar 30 '37	486.88 *
Apr 3 '37	16.09—	400.00—		Apr 1 '37	496.88 *
Apr 7 '37	117.27—			Apr 3 '37	80.79 *
			500.00	Apr 7 '37	36,480.00
Mar 13 '37	46.71—	8.24—		Apr	
Apr 13 '37	50.00—	35.50—		Apr 9 '37	463.52 *
Apr 15 '37	50.00—			Apr	
Apr 21 '37	40.00—			Apr 13 '37	408.57 *
			13,040.00	Apr 13 '37	323.07 *
Apr 24 '37	12,500.00—			Apr 15 '37	273.07 *
Apr 28 '37	50.00—			Apr 21 '37	233.07 *
Apr 28 '37	150.00—			Apr 23 '37	13,273.07 *
Apr 29 '37	35.00—	18.62—		Apr 24 '37	773.07 *
May 4 '37	50.00—			Apr 28 '37	723.07 *
			2,081.03	Apr 28 '37	573.07 *
			150.00	Apr 29 '37	519.45 *
			3,820.00	May 4 '37	469.45 *
			1,000.00	May 4 '37	2,550.48 *
May 6 '37	50.00—			May 5 '37	4,790.48 *
May 6 '37	5,000.00—			May 5 '37	5,520.48 *
May 7 '37	150.00—			May 5 '37	6,520.48 *
May 8 '37	29.40—		150.00	May 6 '37	6,470.48 *
May 8 '37	43.48—			May 6 '37	1,470.48 *
				May 7 '37	1,470.48 *
				May 8 '37	1,441.08 *
				May 8 '37	1,397.60 *
			Balance Forward to		

* Pencil notation.

1871

1872

1873

1874

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

MR. LOUIS ROTH

No. 3 A

Date	Checks	Deposits	Date	Balance
		Balance Forward 427	May 10 '37	1,397.60 S
May 10 '37	6.18—		May 10 '37	1,391.42 *
May 10 '37	150.00—		May 10 '37	1,241.42 *
May 11 '37	50.00—		May 11 '37	1,191.42 *
May 11 '37	7.70—		May 11 '37	1,183.72 *
		300.00	May 12 '37	1,483.72 *
		150.00	May 17 '37	1,633.72 *
May 18 '37	50.00—		May 18 '37	1,583.72 *
May 19 '37	5.04—		May 19 '37	1,578.68 *
May 19 '37	5.40—EC	EC 5.40	May 19 '37	1,584.08 *
		6.40	May 19 '37	1,585.08 *
		365.50	May 26 '37	1,950.58 *
May 27 '37	1.35—		May 27 '37	1,949.23 *
May 28 '37	5.61—		May 28 '37	1,943.62 *
May 29 '37	161.10—		May 29 '37	1,782.52 *
Jun 1 '37	50.00—		Jun 1 '37	1,732.52 *
Jun 1 '37	50.00—		Jun 1 '37	1,682.52 *
Jun 1 '37	50.00—		Jun 1 '37	1,632.52 *
Jun 2 '37	50.00—		Jun 2 '37	1,582.52 *
Jun 2 '37	930.93—		Jun 2 '37	651.59 *
Jun 3 '37	3.50—		Jun 3 '37	648.09 *
		16.38	Jun 3 '37	664.47 *
Jun 5 '37	39.24—		Jun 5 '37	625.23 *
Jun 8 '37	33.47—		Jun 8 '37	591.76 *
Jun 8 '37	100.00—		Jun 8 '37	491.76 *
		10,000.00	Jun 9 '37	10,491.76 *
Jun 14 '37	200.00—		Jun 14 '37	10,291.76 *
Jun 15 '37	9,660.09—		Jun 15 '37	631.67 *
Jun 17 '37	114.34—		Jun 17 '37	517.33 *
Jun 18 '37	27.06—	170.00— 26.18—	Jun 18 '37	294.09 *
Jun 19 '37	27.37—		Jun 19 '37	266.72 *
Jun 22 '37	50.00—		Jun 22 '37	216.72 *
Jun 23 '37	11.90—		Jun 23 '37	204.82 *
Jun 23 '37	50.00—		Jun 23 '37	154.82 *
Jun 26 '37	10.75—	100.00—	Jun 26 '37	44.07 *
		1,199.05	Jun 26 '37	1,243.12 *
		710.11	Jun 29 '37	1,953.23 *
Jun 30 '37	12.67—		Jun 30 '37	1,940.56 *
Jul 2 '37	937.66—		Jul 2 '37	1,002.90 *
Jun 2 '37	75.00—	1,000.00— 1,432.07	Jun 2 '37	1,359.97 *
Jun 3 '37	50.00—		Jun 3 '37	1,309.97 *
Jul 7 '37	300.00—	40.03—	Jul 7 '37	969.94 *
Jul 8 '37	700.00—		Jul 8 '37	3,269.94 *
Jul 9 '37	6.03—	14.44— 129.00—	Jul 9 '37	3,120.47 *
Jul 10 '37	87.49—		Jul 10 '37	3,032.98 *
Jul 12 '37	88.50—	12.16— 200.00—	Jul 12 '37	2,732.32 *
Jul 13 '37	12.50—	248.79— 1,200.00—		
Jul 13 '37	31.42—	295.71—		
		Balance Forward 427	Jul 13 '37	943.90 *

† Notation in longhand over date column.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

2. *Explain the importance of the following factors in the development of a country's economy:*
 (a) *Human resources*
 (b) *Capital resources*
 (c) *Technology*
 (d) *Infrastructure*
 (e) *Government policy*
 (f) *International trade*
 (g) *Investment*
 (h) *Education*
 (i) *Healthcare*
 (j) *Environment*
 (k) *Democracy*
 (l) *Corruption*
 (m) *Religion*
 (n) *Culture*
 (o) *Language*
 (p) *History*
 (q) *Geography*
 (r) *Climate*
 (s) *Soil*
 (t) *Water*
 (u) *Energy*
 (v) *Transport*
 (w) *Communication*
 (x) *Science*
 (y) *Art*
 (z) *Music*
 (aa) *Dance*
 (ab) *Food*
 (ac) *Drinks*
 (ad) *Games*
 (ae) *Sports*
 (af) *Religion*
 (ag) *Philosophy*
 (ah) *Law*
 (ai) *Medicine*
 (aj) *Agriculture*
 (ak) *Industry*
 (al) *Commerce*
 (am) *Finance*
 (an) *Education*
 (ao) *Healthcare*
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 (aq) *Democracy*
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 (az) *Water*
 (ba) *Energy*
 (bb) *Transport*
 (bc) *Communication*
 (bd) *Science*
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 (bf) *Music*
 (bg) *Dance*
 (bh) *Food*
 (bi) *Drinks*
 (bj) *Games*
 (bk) *Sports*
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 (bm) *Philosophy*
 (bn) *Law*
 (bo) *Medicine*
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 (bq) *Industry*
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 (bs) *Finance*
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 (bu) *Healthcare*
 (bv) *Environment*
 (bw) *Democracy*
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 (gt) *Environment*
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 (gz) *History*
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 (hi) *Art*
 (hj) *Music*
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 (hl) *Food*
 (hm) *Drinks*
 (hn) *Games*
 (ho) *Sports*
 (hp) *Religion*
 (hq) *Philosophy*
 (hr) *Law*
 (hs) *Medicine*
 (ht) *Agriculture*
 (hu) *Industry*
 (hv) *Commerce*
 (hw) *Finance*
 (hx) *Education*
 (hy) *Healthcare*
 (hz) *Environment*
 (ia) *Democracy*
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 (ic) *Religion*
 (id) *Culture*
 (ie) *Language*
 (if) *History*
 (ig) *Geography*
 (ih) *Climate*
 (ii) *Soil*
 (ij) *Water*
 (ik) *Energy*
 (il) *Transport*
 (im) *Communication*
 (in) *Science*
 (io) *Art*
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 (iq) *Dance*
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 (it) *Games*
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 (iv) *Religion*
 (iw) *Philosophy*
 (ix) *Law*
 (iy) *Medicine*
 (iz) *Agriculture*
 (ja) *Industry*
 (jb) *Commerce*
 (jc) *Finance*
 (jd) *Education*
 (je) *Healthcare*
 (jf) *Environment*
 (jg) *Democracy*
 (jh) *Corruption*
 (ji) *Religion*
 (jj) *Culture*
 (jk) *Language*
 (jl) *History*
 (jm) *Geography*
 (jn) *Climate*
 (jo) *Soil*
 (jp) *Water*
 (jq) *Energy*
 (jr) *Transport*
 (js) *Communication*
 (jt) *Science*
 (ju) *Art*
 (jv) *Music*
 (

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 3 B

Date	Checks		Deposits		Date	Balance
			Balance Forward	<i>JP</i>		
Jul 13 '37	257.50—				Jul 13 '37	943.90 *
Jul 14 '37	20.87—	119.00—	85.26—		Jul 13 '37	686.40 *
				25.20	Jul 14 '37	461.27 *
Jul 21 '37	173.23—				Jul 19 '37	486.47 *
				1,038.60	Jul 21 '37	313.24 *
Jul 24 '37	252.88—	98.82—			Jul 23 '37	1,351.84 *
Jul 24 '37	28.34—	90.00—			Jul 24 '37	1,000.14 *
Jul 26 '37	50.00—				Jul 24 '37	881.60 *
Jul 27 '37	7.21—	1.25—			Jul 26 '37	831.80 *
Jul 28 '37	14.57—				Jul 27 '37	823.34 *
Jul 30 '37	5.84—	X 3.91—			Jul 28 '37	808.77 *
Jul 31 '37	50.00—				Jul 30 '37	799.02 *
				50.00	Jul 31 '37	749.02 *
Aug 3 '37	35.00—				Aug 2 '37	799.02 *
Aug 3 '37	50.00—				Aug 3 '37	764.02 *
Aug 5 '37	12.82—				Aug 3 '37	714.02 *
				300.00	Aug 5 '37	701.20 *
Aug 6 '37	24.72—	89.00—	85.00—		Aug 5 '37	1,001.20 *
Aug 7 '37	50.00—				Aug 6 '37	802.48 *
Aug 7 '37	30.90—				Aug 7 '37	752.48 *
Aug 10 '37	22.30—				Aug 7 '37	721.58 *
Aug 11 '37	50.00—				Aug 10 '37	699.28 *
Aug 17 '37	155.50—				Aug 11 '37	649.28 *
Aug 18 '37	41.75—				Aug 17 '37	493.78 *
				5,085.47	Aug 18 '37	452.03 *
Aug 19 '37	1.28—				Aug 18 '37	5,537.50 *
Aug 21 '37	50.00—				Aug 19 '37	5,536.22 *
Aug 21 '37	5.05—				Aug 21 '37	5,486.22 *
Aug 23 '37	2.70—				Aug 21 '37	5,481.17 *
				98.25	Aug 23 '37	5,478.47 *
Aug 24 '37	2.43—				Aug 23 '37	5,576.72 *
Aug 25 '37	34.93—				Aug 24 '37	5,574.29 *
Aug 25 '37	17.00—				Aug 25 '37	5,539.36 *
Aug 26 '37	24.72—				Aug 25 '37	5,522.36 *
Aug 28 '37	17.00—				Aug 26 '37	5,497.64 *
Aug 30 '37	75.00—				Aug 28 '37	5,480.64 *
Aug 31 '37	70.00—				Aug 30 '37	5,405.64 *
Sep 1 '37	11.91—				Aug 31 '37	5,335.64 *
Sep 2 '37	85.00—				Sep 1 '37	5,323.73 *
Sep 3 '37	40.49—				Sep 2 '37	5,238.73 *
Sep 3 '37	15.62—				Sep 3 '37	5,198.24 *
				500.00		
				666.45		
				70.00		
Sep 4 '37	3.00—				Sep 3 '37	6,419.07 *
Sep 8 '37	6.54—	5.15—			Sep 4 '37	6,416.07 *
			Balance Forward	<i>JP</i>	Sep 8 '37	6,404.38 *

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

[illegible]

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 4 A

Date	Checks	Deposits		Date	Balance
		Balance	Forward		
			427	Sep 10 '37	6,404.38 S
			16.38	Sep 10 '37	6,420.76 *
			45.00	Sep 13 '37	6,465.76 *
Sep 13 '37	45.00			Sep 13 EC	6,420.76 *
			62.16		
			1,000.00	Sep 14 '37	7,482.92 *
Sep 16 '37	46.84—			Sep 16 '37	7,436.08 *
Sep 17 '37	25.00—		7,000.00	Sep 17 '37	14,411.08 *
Sep 20 '37	98.61—			Sep 20 '37	14,312.47 *
Sep 21 '37	12,330.04—			Sep 21 '37	1,982.43 *
Sep 21 '37	50.00—			Sep 21 '37	1,932.43 *
Sep 22 '37	2.72—	2.29—		Sep 22 '37	1,927.42 *
Sep 23 '37	50.00—		5,000.00	Sep 23 '37	1,877.42 *
				Sep 23 '37	6,877.42 *
Sep 24 '37	100.00—			Sep 24 '37	6,777.42 *
Sep 25 '37	41.60—			Sep 25 '37	6,735.82 *
Sep 28 '37	160.00—			Sep 28 '37	6,575.82 *
			6,000.00		
			13,900.00	Sep 28 '37	26,475.82 *
Sep 29 '37	22,500.00—		545.77	Sep 29 '37	3,975.82 *
				Sep 30 '37	4,521.59 *
Oct 1 '37	500.00—			Oct 1 '37	4,021.59 *
Oct 5 '37	6.70—			Oct 5 '37	22500‡
Oct 6 '37	85.00—			Oct 6 '37	# 21‡
Oct 7 '37	25.00—			Oct 6 '37	3,929.89 *
			210.00	Oct 6 '37	3,929.89 *
Oct 8 '37	500.00—	25.00—		Oct 7 '37	4,114.89 *
Oct 8 '37	40.47—			Oct 8 '37	3,589.89 *
Oct 11 '37	6.00—			Oct 8 '37	3,549.42 *
Oct 13 '37	48.99—			Oct 11 '37	3,543.42 *
			1,000.00	Oct 13 '37	3,494.43 *
Oct 14 '37	25.00—			Oct 13 '37	4,494.43 *
Oct 15 '37	3,000.00—	25.00—		Oct 14 '37	4,469.43 *
			15,200.00	Oct 15 '37	1,444.43 *
Oct 19 '37	584.53—	35.00—		Sep 18 '37	16,644.43 *
Oct 19 '37	35.00—	3,000.00—		Oct 19 '37	16,624.90 *
Oct 20 '37	11,420.45—	1,000.00—		Oct 19 '37	12,989.90 *
Oct 20 '37	59.63—			Oct 20 '37	569.45 *
Oct 22 '37	17.50—			Oct 22 '37	529.76 *
Oct 22 EC	60.00—			Oct 22 '37	543.26 *
			20.00	Oct 22 EC	463.26 *
			Balance Forward	Oct 22 EC	472.26 *
			427		

‡ Notation in longhand.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

[illegible]

(Testimony of W. J. Hunter.)

Plaintiff's Exhibit No. 227—(Continued)

LEDGER

LOUIS ROTH

No. 4 B

Date	Checks	Deposits		Date	Balance
		Balance Forward	12.27 29.90		
Oct 23 '37	1.89—			Oct 22 '37	472.26 S
Oct 26 '37	187.05—			Oct 22 EC	492.26 •
Oct 26 '37	2.43—			Oct 23 '37	490.37 •
Oct 30 '37	25.00—			Oct 26 '37	303.32 •
Nov 3 '37	25.59—		150.00	Oct 26 '37	300.89 •
Nov 4 '37	10.00—	85.00—		Oct 27 '37	450.89 •
Nov 5 '37	4.05—			Oct 30 '37	425.89 •
Nov 6 '37	15.45—			Nov 3 '37	400.30 •
			500.00	Nov 4 '37	305.30 •
Nov 8 '37	322.71—			Nov 5 '37	301.25 •
Nov 10 '37	34.63—		100.00	Nov 6 '37	285.80 •
			105.00	Nov 6 '37	785.80 •
Nov 12 '37	25.00—			Nov 8 '37	463.09 •
Nov 15 '37	48.70—			Nov 10 '37	633.46 •
Nov 17 '37	25.00—			Nov 12 '37	608.46 •
			82.41	Nov 15 '37	559.76 •
Nov 19 '37	2.00—			Nov 17 '37	534.76 •
Nov 20 '37	35.00—			Nov 18 '37	617.17 •
Nov 22 '37	2.11—	26.30—	17.50—	Nov 19 '37	615.17 •
Nov 23 '37	24.21—			Nov 20 '37	580.17 •
Nov 24 '37	8.00—	8.00—		Nov 22 '37	534.26 •
Nov 26 '37	83.37—			Nov 23 '37	510.05 •
Nov 26 '37	35.00—		250.00	Nov 24 '37	494.05 •
Nov 27 '37	3.23—			Nov 26 '37	410.68 •
Nov 27 '37	74.75—			Nov 26 '37	625.68 •
Nov 27 '37	17.50—			Nov 27 '37	622.45 •
Nov 30 '37	25.00—			Nov 27 '37	547.70 •
Dec 1 '37	12.50—	5.00—		Nov 27 '37	530.20 •
			420.00	Nov 30 '37	505.20 •
Dec 6 '37	3.09—	111.50—		Dec 1 '37	487.70 •
Dec 6 '37	3.35—			Dec 1 '37	907.70 •
Dec 7 '37	85.00—	9.30—		Dec 6 '37	793.11 •
Dec 7 '37	1.55—		16.38	Dec 6 '37	789.76 •
Dec 8 '37	10.30—			Dec 7 '37	695.46 •
			74.43	Dec 7 '37	710.29 •
Dec 8 '37	30.82—			Dec 8 '37	699.99 •
				Dec 8 '37	774.31 •
				Dec 8 '37	743.49 •
			Balance Forward 12.27		

[Endorsed]: Oct. 26, 1942.

Union Bank & Trust Co.
of Los Angeles
Savings Commercial Trust

No. 10325

United States
Circuit Court of Appeals
For the Ninth Circuit.

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME IV
Pages 1069 to 1464

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

FILED

APR 17 1944

PAUL P. O'BRIEN,

CLERK

No. 10325

United States
Circuit Court of Appeals

For the Ninth Circuit.

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME IV

Pages 1069 to 1464

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

(Tectimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 228


Deposited With

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

Date—July 9, 1935

 In making this deposit and at all times in doing business with this bank, the depositor specifically agrees to each and all of the terms and conditions printed on the reverse side hereof and to each and all of the By-Laws, Rules and Regulations of this bank.

Depositor—Louis Roth

Term.....Special.....Com'l

Dollars Cents

Gold

[Circled in pencil] : #1425

Silver

Currency

Checks 19-10..... 6,321.88

(Specify number of bank upon which checks are drawn)

19-10..... 6,321.88

19-10..... 5,617.18

18,260.94

18,260.94

Tr 9691

Bal. \$

[Reverse Side]

[In pencil] : 1

Every Officer Instantly Available at All Times

(Cut)

Interest Paid on Term Savings Accounts

Savings Commercial Trust

Eighth and Hill Streets

Member Federal Reserve System

One Bank—No Branches

Safe Deposit Boxes for Rent \$4.00 and Up Per Year

(Testimony of W. J. Hunter.)

In receiving checks, drafts, notes or other paper for deposit, credit or collection, the same are credited only subject to final payment, and this bank assumes no responsibility for any act, omission, failure, neglect or default of any of its direct or indirect collecting agents, or for the loss of any such paper in the mail, and shall be held liable only for proceeds in money which have come into its possession. Under these conditions, items previously credited may be charged back to the depositor's account. The right is reserved and this bank is authorized to forward all such paper for payment or collection directly to the drawee bank or through any other bank and to receive payment by draft drawn by the drawee or any other bank. In making this deposit the depositor hereby expressly assents to each and all of the foregoing conditions.

[Stamp]: 33 Jun 10 1935

[Endorsed]: Filed Jun 28, 1943.

Q. (By Mr. Hile) Handing you what has been admitted in evidence these various exhibits, 228, 157, 124, 122 and 127 and calling your attention—Referring to the [391] deposit tickets deposited in the Roth account, 228, I will ask you to refer to Government's 124 in the amount of \$6,321.88. Do you find that, sir? A. I do.

Q. Do those two items, that is the item of that amount on the deposit ticket and that check have any relation one to the other?

A. Yes. The deposit tag in the name of Louis Roth shows that the check which is exhibit 124 is one of the items contained thereon.

Q. And with respect to Government's 157, the second check—Do you find that, the second check, I think it is. A. Correct.

(Testimony of W. J. Hunter.)

Q. Check in the amount of \$6,321.88, is that the amount? A. \$6,321.88?

Q. Yes. Does that check have any relation to the deposit ticket of Louis Roth?

A. Yes, it is the check mentioned on the deposit tag.

Q. And with reference to Government's 122, a check in the amount of \$5,617.18, I will ask you if that has any relation to the deposit ticket of Louis Roth?

A. It is also described on the same deposit ticket.

Q. That takes care of all three items, all of the items mentioned on Louis Roth's deposit ticket? Is that correct, sir? A. It does.

I was present when this deposit was made and my personal mark is on the checks. I had a conversation with [392] Roth about them.

Conversation objected to by Mr. Simon as hearsay and incompetent.

Explanation was made by Mr. Hile to the court calling attention to the notations on the three checks of the Peoples Gas and Oil Company in evident to B. Blank for \$6,321.88, in Exhibit 124, to Louis Roth. Likewise, for \$6,321.88 in Exhibit 157 and to M. M. Black for \$5,617.18, all listed on Louis Roths' deposit ticket, Exhibit 228 for \$18,260.94.

The Court: Are those two checks, do I understand, exact duplicates of one another?

Mr. Hile: They are, your Honor, except that one is payable to Blank and one is payable to Roth and the third one which appears on it is Government's

(Testimony of W. J. Hunter.)

122 which is payable to M. M. Black for \$5,617.18, and showing data on payment of the note and interest, which totals the same, and endorsed by Black and by Louis Roth.

These are the notes of the Company, I might state, which were issued in payment—I mean the checks of the Company which were issued in payment of the notes, the original \$20,000.00.

Mr. Simon: Taking into account all that counsel has said, I still don't understand how the hearsay statements of Mr. Roth, who by a verdict of the jury in this case has been established to be not guilty of conspiracy, could be admissible in evidence against the defendant Meyers.

I object to it, not upon the ground of lack of materiality, but merely on the ground that it is incompetent as hearsay.

The Court: Objection overruled.

Mr. Meyer: Exception.

The Court: Allowed. You may answer. [393]

Mr. Roth brought the checks to me and asked me the most expeditious way to collect them. I told him the best way would be to send them to the main office of the drawee bank of Peoples Bank & Trust Company of Seattle with instructions to wire back immediately on receipt whether they were paid so he told me what to do and we did it. These checks were cleared in Louis Roth's account on July 10, 1935 in the amount of \$18,260.94. On July 11, 1935 there was a withdrawal of the same amount of \$18,260.94.

(Testimony of W. J. Hunter.)

Exhibit 229 is a photostatic copy of \$1740 deposit to Louis Roth's account on August 1, 1935. It covers the \$1740 check of the Peoples Gas and Oil Company to Louis Roth, which is Government's exhibit 158. The check was cleared through the Union Bank and Trust Company the same date as the deposit slip. Plaintiff's exhibit 229 admitted.

PLAINTIFF'S EXHIBIT No. 229


Deposited With

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

Date—Aug 1 1935

 In making this deposit and at all times in doing business with this bank the depositor specifically agrees to each and all of the terms and conditions printed on the reverse side hereof and to each and all of the By-Laws, Rules, and Regulations of this bank.

Depositor—Louis Roth

Term_____Special_____Com'l

Dollars Cents

Gold

Silver

Currency

Checks 1,740.00

(Specify number of bank upon which checks are drawn)

1,740.00

Bal. \$

[Endorsed]: Filed Jun 28, 1943.

(Testimony of W. J. Hunter.)

Exhibits 230 to 234 are photostatic records of deposits to the account of Louis Roth. Said exhibits admitted without objection.

PLAINTIFF'S EXHIBIT No. 232


Deposited With

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

Date—Jan 23 1936

 In making this deposit and at all times in doing business with this bank, the depositor specifically agrees to each and all of the By-Laws, Rules and Regulations of this bank and to all applicable provisions of law.

Depositor—Louis Roth

Term _____ Special _____ Com'l _____

Dollars Cents

Silver

Currency

Checks 19-25 1,792.00

Specify Banks Drawn On

Bal. \$

[Stamp]: Illegible.

[Stamp]: 17 Jan 23 1936

[Endorsed]: Filed Jun 28, 1943.

(Testimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 233


Deposited With

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

Date—Jan 24 1936

 In making this deposit and at all times in doing business with this bank, the depositor specifically agrees to each and all of the By-Laws, Rules and Regulations of this bank and to all applicable provisions of law.

Depositor—Louis Roth

Term—Special—Com'l

Dollars Cents

Silver 5,512.00

Currency 640.00

Checks 1,792.00

Specify Banks Drawn On 7,944.00

Bal. \$

[Stamp]: Illegible [Stamp]: 17 Jan 24 1936

[Endorsed]: Filed Jun 28, 1943.

PLAINTIFF'S EXHIBIT No. 234

Deposited With

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

Date—Apr 10 1936

 In making this deposit and at all times in doing business

(Testimony of W. J. Hunter.)

with this bank, the depositor specifically agrees to each and all of the By-Laws, Rules and Regulations of this bank and to all applicable provisions of law.

Depositor—Louis Roth

Term—Special—Com'l

[Initialed]: C

		Dollars	Cents
Silver			
Currency			
Checks 19-25.....		11,200.—	
Specify Banks Drawn On			
19-25.....		34,450.—	
			45,650.—
Bal. \$			

[Stamp]: 17 Apr 10 1936

[Endorsed]: Filed Jun 28 1943.

Exhibit 230 lists a Peoples Gas and Oil Company check for \$896 to B. Blank found in exhibit 124; a check for \$896 found in his file, exhibit 165; and a check for \$3,264 from the same source to M. M. Black found in his file, Exhibit 122. These checks total the amount of the deposit by Roth of \$5056 on August 14, 1935. These are dividend checks from Dividend No. 1 of the Peoples Gas and Oil Company.

Exhibit 231 includes Peoples Gas and Oil Check for \$896 to B. Blank also found in exhibit 124; a similar check for \$896 to Louis Roth found in his file, exhibit 165; and a check for \$3,264 to M. M.

(Testimony of W. J. Hunter.)

Black found in exhibit 122. These make the total of exhibit 231, except for an additional item of \$908.

[394]

The \$896 for Blank listed on Exhibit 231 is the 5th check in his file, exhibit 124; the \$896 check for Roth in the list is the third check in his file, exhibit 165, and the \$3264 check to M. M. Black is the fourth in his file, Government exhibit 122.

By Mr. Hile: These are dividend checks for Dividend No. 3 of the Peoples Gas and Oil Company.

The single item of \$1792 on Roth's deposit slip, exhibit 232, dated January 23, 1936 is the fourth check in his file, exhibit 165.

Mr. Hile: I found when Mr. Munkres was on the stand we neglected to offer Exhibit 132, particularly Page 132 A, which is the general ledger of the Peoples Gas & Oil Company, which was identified by Mr. Munkres.

Plaintiff's Exhibit 132 thereupon admitted without objection.

Exhibit 233 is the Roth deposit ticket dated January 24, 1936. It includes a check for \$1792 from the Peoples Gas and Oil Company to B. Black, which is the second check in his file, government's exhibit 124. It is the same check. It also contains the fourth check in government's exhibit 164, from the Peoples Gas and Oil Company in the amount of \$640 payable to Einzig, and also a check for \$5512 of the Peoples Gas and Oil Company to M. M. Black, which is the fifth in the Black file, government's exhibit 122.

(Testimony of W. J. Hunter.)

Exhibit 234 is the Roth deposit ticket for \$45,560 dated April 16, 1936. It contains a check for \$11,200 from the Peoples Gas and Oil Company to Louis Roth, which is the fifth check in the Roth file, government's exhibit 165. Also a check from the Peoples Gas and Oil to M. M. Black [395] for \$34,350.00 of which government's exhibit 123 is a photostat.

Exhibit 235 for identification, was a requisition signed by Lou Roth for a cashier's check in the sum of \$5,000.00 payable to H. H. Meyers, and exhibit 236 for identification was the cashier's check in the sum of \$5,000.00 payable to H. H. Meyers, whereupon exhibits 235 and 236 were offered in evidence and the following objection was made.

The Court: Any objection, Mr. Simon?

Mr. Simon: No, only the objection that it is irrelevant and immaterial, as far as I know.

The Court: The objection will be overruled and exception allowed and admitted in evidence.

(Testimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 235

UNION BANK & TRUST CO.
of Los Angeles
Savings Commercial Trust

EXCHANGE REQUISITION

Use Separate Ticket For Each City

() Cashier's Check () Domestic Draft () Cert. of Dep.

[Notation in pencil]: F 3

On.....No. 236624 Los Angeles, Cal.,.....193.....
Name of City

In Favor of	Exch. Charge	Amount
Dr. H. H. Meyers		5000.—

[Stamp] : 21 A Dec 7 1935

Union Bank & Trust Co. of Los Angeles (hereinafter called "the Bank") is not responsible for errors, delays in transmission, or for claims occasioned by any circumstances beyond its control. The encashment of any domestic draft in any country other than the United States of America shall conclusively be deemed satisfaction of the obligations of the Bank created by this requisition and/or purchaser's payment therefor, and the Bank shall not be responsible in case of realization of proceeds by any other than the true payee or endorsee nor responsible for the genuineness of any endorsement or the identity of any person claiming to be payee or endorsee.

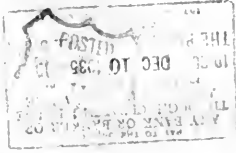
I have read and hereby agree to all of the foregoing conditions.

[Initial illegible] (Cut)

LOUIS ROTH
Purchaser's Signature

Address

[Endorsed]: Filed Oct. 26, 1942.



1994-1995



(Testimony of W. J. Hunter.)

Government's 237 and 238 are permanent records of my bank. 237 is an application for a cashier's check and 238 is the check. I signed the check. I made a note for a check payable to Lou Roth for \$1792.00. These exhibits admitted.

Mr. Hile: I will now read Exhibit 235 which is an exchange requisition in favor of Dr. H. H. Meyers, \$5,000.00, Louis Roth, and 236 which is a check on the Union Bank & Trust Company, a certified check, payable to the order of Dr. H. H. Meyers, \$5,000.00 Cashier's Check, endorsed Dr. H. H. Meyers—H. H. Meyers.

Exhibit 237 for identification, is an application [396] by Louis Roth for cashier's check in favor of Louis Roth in the sum of \$1792.00, and exhibit 238, for identification, is a cashier's check in the sum of \$1792.00 to the order of Louis Roth, and endorsed by Louis Roth. Whereupon exhibits 237 and 238, for identification, were offered in evidence and the following objection was made:

Mr. Simon: I don't see any materiality, your Honor, but I have **no other objections**.

The Court: They will be admitted in evidence. Exception allowed.

Requisition for check and check admitted in evidence and marked Plaintiff's Exhibits 237 and 238.

(Testimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 237

UNION BANK & TRUST CO.
 of Los Angeles
 Savings Commercial Trust

EXCHANGE REQUISITION

Use Separate Ticket For Each City

() Cashier's Check () Domestic Draft () Cert. of Dep.

On.....No. 240120 Los Angeles, Cal. Jan. 23, 1936
 Name of City

In Favor of	Exch. Charge	Amount
Louis Roth	10	1792.—

[Stamp]: 21 A Jan 23 1936

Union Bank & Trust Co. of Los Angeles (hereinafter called "the Bank") is not responsible for errors, delays in transmission, or for claims occasioned by any circumstances beyond its control. The encashment of any domestic draft in any country other than the United States of America shall conclusively be deemed satisfaction of the obligations of the Bank created by this requisition and/or purchaser's payment therefor, and the Bank shall not be responsible in case of realization of proceeds by any other than the true payee or endorsee or responsible for the genuineness of any endorsement or the identity of any person claiming to be payee or endorsee.

I have read and hereby agree to all of the foregoing conditions.

[Initial illegible] (Cut)

ALFRED BLACK
 Purchaser's Signature

834 So. Broadway
 Address

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of W. J. Hunter.)

Mr. Hile: Now, reading 237, a requisition in favor of Louis Roth for a Cashier's Check in the amount of \$1792.00, and 238 is a check payable to the order of Louis Roth on the Union Bank & Trust Company for \$1792.00, Cashier's Check, and endorsed by Louis Roth, deposited to the credit of H. H. Meyers, Bank of America, Bank No. B-47.

Q. (By Mr. Simon) Is that Mr. Meyers' handwriting? Does the witness know whose handwriting that is?

A. No, I believe it is the handwriting of the teller that handled the transaction in the Bank of America, Branch No. 347. The endorsement is that of Louis Roth.

Q. But H. H. Meyers is not on there?

A. The teller of the Bank of America. [397]

Mr. Hile: I call the Jury's attention to Plaintiff's Exhibit 232, which is the deposit by Lew Roth of the check of \$1792, and giving the check number 19-25, and the fourth check in Government's 165, being check No. 19-25, of \$1792 by the Peoples Gas & Oil Company to Lew Roth, Dividend No. 4.

Government's Exhibits 239 and 240 are records of my bank kept in the regular course of business. Exhibit 239 is an application for a cashier's check and 240 is the check. These exhibits admitted without objection.

(Testimony of W. J. Hunter.)

PLAINTIFF'S EXHIBIT No. 239

UNION BANK & TRUST CO.

of Los Angeles

Savings Commercial Trust

EXCHANGE REQUISITION

Use Separate Ticket For Each City

() Cashier's Check () Domestic Draft () Cert. of Dep.

On.....No. 240172 Los Angeles, Cal. 1-24 1936
Name of City

In Favor of	Exch. Charge	Amount
Louis Roth	---	7944.00

Union Bank & Trust Co. of Los Angeles (hereinafter called "the Bank") is not responsible for errors, delays in transmission, or for claims occasioned by any circumstances beyond its control. The encashment of any domestic draft in any country other than the United States of America shall conclusively be deemed satisfaction of the obligations of the Bank created by this requisition and/or purchaser's payment therefor, and the Bank shall not be responsible in case of realization of proceeds by any other than the true payee or endorsee nor responsible for the genuineness of any endorsement or the identify of any person claiming to be payee or endorsee.

I have read and hereby agree to all of the foregoing conditions.

[Initials illegible] (Cut)

LOUIS ROTH

Purchaser's Signature

Address

[Endorsed]: Filed Oct. 26, 1942.

100
100
100

24.240
EST 2 A 1912
adm.

UNION BANK & TRUST CO. 16-77
LOS ANGELES

COMMERCIAL

LOS ANGELES, CAL.

193

No. 240172

PAY TO THE ORDER OF

UNION BANK & TRUST CO. \$379.44
LOS ANGELES, CAL.

DOLLARS

CASHIERS CHECK

W. J. [Signature]

AMOUNT PAID TO ORDER
BY CASHIERS

(Testimony of W. J. Hunter.)

Mr. Hile: Cashier's check of the bank dated January 24, 1936, same date as the requisition, paid to the order of Louis Roth, \$7944, Cashier's Check on the Union Bank & Trust Company, and on the reverse side there is the endorsement of Louis Roth, by stamp "Deposited to the credit of"—and in writing, H. H. Meyers, Bank of America, Branch 347.

The indication is that the name H. H. Meyers was signed by the teller of the Bank of America.

Mr. Hile: With reference to the two items I have just read, reading from Page 188, which is the account of H. H. Meyers with the Bank of America, 6th & Alexander Branch, Deposit \$1792, January 24, 1936, \$7944.

Plaintiff's Exhibit 233, a deposit ticket of Louis Roth in Union Bank & Trust Co., includes three dividend checks of the Peoples Gas & Oil Co., for respectively \$5512 to M. M. Block, \$640 to Louis Einzig, and \$1792 to B. Blank—total \$7944. These three checks are respectively the fifth and last in Govt. Ex. 122, the fourth in Ex. 164, and the second in Ex. 124. [398]

Objections by Mr. Simon to the statement by government's counsel overruled by the court. Mr. Hile continuing—

Mr. Hile: Referring to the third item on the deposit ticket of Louis Roth, an item of \$1792, reading Government's Exhibit, the second check in Government's 124, Dividend No. 4, Peoples Gas & Oil Company to Blank in the amount of \$1792.

(Testimony of W. J. Hunter.)

Cross Examination

By Mr. Simon:

I know Louis Roth. He is a merchant in the City of Los Angeles doing a rather extensive business. I am not in a position to say whether Meyers loaned money to Mr. Roth. I don't know anything about any financial arrangements between them.

Mr. Roth is running a ladies ready-to-wear shop, known as "Sweldom". He also operated that in 1934 to the best of my recollection.

I believe we have an account with Mrs. Meyers. I do not know how long it has been maintained.

Re-Direct Examination

By Mr. Hile:

It is my recollection that Mrs. Meyers' account had a balance of between \$300 and \$400.

Mr. Simon: I may say to the Court that counsel and I, in order to save time on that have entered into a stipulation, subject to the objection, Your Honor, that these items insofar as they refer to Mr. Roth are irrelevant and immaterial and further incompetent because it has been established by the verdict of the jury in this case that Roth was not a conspirator. [399]

Subject to that objection, we are prepared to stipulate that appropriate witnesses, if called, would testify as follows:

Mr. Hiles: That with respect to the first check in Government's 142, which is a check payable to the order of M. M. Black by the Peoples Gas & Oil Com-

(Testimony of W. J. Hunter.)

pany in the amount of \$5617.18 and with respect to—the first check in Government's 124 which is check 5644 payable to Dr. B. Blank in the sum of \$6,321.88 by the Peoples Gas & Oil Company and dated July 6, 1935, and with respect to the second check in Government's 157, which is a check of the Peoples Gas & Oil Company, dated July 6, 1935, to Louis Roth in the amount of \$6321.88 that on July 9, 1935 Louis Roth deposited these three checks mentioned in his account—commercial account—in the Union Bank & Trust Company, Los Angeles; that on July 11, 1935 Louis Roth cashed a personal check in the amount of \$18,260.94; that this check of \$18,260.94 was handled by the Chief Teller, Lonnegran of the Union Bank & Trust Company, Los Angeles, California; that in addition to the check mentioned, on August 22, 1935 Teller Lonnegran cashed the personal check for Louis Roth in the amount of \$1,955, and likewise on April 16, 1936 Teller Lonnegran cashed a check in the sum of \$15,000 for Louis Roth; that in addition to the foregoing on April 22, 1936 Teller Lonnegran cashed a personal check for Louis Roth in the sum of \$30,700; and that the following additional Peoples Gas & Oil Company checks were cashed by Louis Roth, such checks being as follows: the second check in Government's 142 which is a check of the Peoples Gas & Oil Company, dated August 21, 1935, to M. M. Black in the amount of \$3,264, deposited by Black and cashed by Roth; that the next check so involved—well, the next check cashed by Louis Roth— [400]

(Testimony of W. J. Hunter.)

Mr. Simon: Just say, another check cashed by Roth.

Mr. Hile: Well, whatever you want, was the third check in Government's 124, being a Peoples Gas & Oil Company check dated August 31, 1935, payable to the order of B. Blank, in the sum of \$896.00 and endorsed the payee B. Blank, and cashed by Louis Roth; that another check, which is the second check in Government's 164, which is a check of the Peoples Gas & Oil Company, issued August 31, 1935, payable to Louis W. Inzig, in the amount of \$320.00, endorsed by Inzig and cashed by Louis Roth; that another check and the last one, is as follows: is a check of the Peoples Gas & Oil Company, dated August 31, 1935, payable to the order of Louis Roth in the sum of \$896.00 and endorsed and cashed by Louis Roth.

I think all of those checks were cashed by Louis Roth. That is the substance of it.

Mr. Simon: The last one was presented on September 4, 1935, to Lonnegran who cashed it.

Mr. Hile: That is right.

The Court: I understand that it is stipulated between counsel, if witnesses were called, they would identify these various checks.

Mr. Simon: And testify as counsel has stated.

The Court: And testify as counsel has stated.

Mr. Hile: That is correct.

The Court: And the general objection on the part of the defendant.

(Testimony of W. J. Hunter.)

Mr. Simon: The general objection as I stated at the beginning of my stipulation.

The Court: The checks will be admitted in evidence, and an exception allowed.

Checks admitted in evidence and marked Plaintiff's Exhibits 142, 157 and 164. [401]

ALBERT L. CLARK,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am assistant cashier, Bank of America, 6th and Alexander Branch at Los Angeles. I have been with the bank since October 16, 1928 and with the Alexander Branch since December 2, 1932. I know defendant Meyers. I have had occasion to transact business with him in the course of my duties.

Government's Exhibits 193 and 195 I have seen before. The check for \$28,000 dated May 6, 1935 was handed to me as a deposit in the commercial account of Mr. H. H. Meyers. The letter, Exhibit 192 was not handed directly to me, but I have seen it. Out of the check for \$28,000, \$25,000 and \$25 interest, as I remember it, was used to pay off a note and \$2975.00 went to the account.

Government's exhibit 191 relating to the \$13,500 loan was noted by me. As assistant cashier I have

(Testimony of Albert L. Clark.)

custody of all collaterals deposited with the bank as security on loans. I had custody of No. 191. When the loan was paid I returned the collateral to H. H. Meyers. That his signature in the lower righthand corner. Those consisted of Treasury Bonds of \$10,000 and \$5,000. When the loan was paid I was given 100 \$100 bills and seven \$500 bills by defendant Meyers. The money was first given to the manager. I saw the transaction. It passed through my hands.

I know Louis Roth of Los Angeles. I met him in November, 1935. H. H. Meyers introduced him to me. That is the defendant sitting here. [402]

Government's 240 is a check to Louis Roth for \$7944 bearing Louis Roth's signature and stamped "Pay to the credit". It was given to me by Louis Roth and deposited to the commercial account of H. H. Meyers.

The writing for H. H. Meyers on the back is in my handwriting.

I have met the wife of the defendant, Mrs. Leona Meyers. Mr. Meyers introduced her to me.

Government's exhibit 209 is the deposit in currency in the amount of \$50,000 to the account of H. H. Meyers. Mrs. Meyers gave that deposit to me. It was given to me in fifty \$1000 bills. I do not recall that anyone else was present. As I recall it she was alone.

I handled the transaction concerned in Government's 211, being a deposit of \$25,000 in currency to the account of H. H. Meyers on July 19, 1936.

(Testimony of Albert L. Clark.)

Mrs. Meyers made the deposit. It was in the form of twenty-five one thousand dollar bills. This time she was not alone. As I remember it, a man was with her, who was introduced to me as Louis Roth. I have seen government's exhibit 212 before relating to a deposit of \$10,000 in currency to the account of H. Harry Meyers on July 24, 1936. Mrs. Meyers deposited that money. It was in the form of ten \$1000 bills. I have seen government's 213 before, being a ticket for the deposit of \$10,000 in currency to the account of H. H. Meyers on July 22, 1936. The deposit was made by Mr. H. H. Meyers. It was in the form of ten \$1000 bills.

I handled the deposit covered by government's exhibit 214 by a deposit of \$6,000 in currency to the account of H. H. Meyers on August 24, 1936. The deposit was made by H. H. Meyers. It was in large bills. I do not recall whether it was thousands or five hundreds, but I believe it was thousands.

[403]

I have seen government's exhibit 238 before, being a cashier's check payable to Louis Roth for \$1792, bearing the signature of Louis Roth and the purported signature of H. Harry Meyers. The check was taken by a teller named Mr. Cook. When a customer is in the bank to sign his own endorsement the bank uses its stamp. I was in the bank, but did not see the transaction itself.

(Testimony of Albert L. Clark.)

Cross Examination

By Mr. Simon:

Exhibit A-115 is a pass book on Bank of America, Sixth and Alexander Branch, of H. H. Meyers' commercial account. Sometimes the deposit would be made by bank duplicate deposit slips so there would be no deposit in the account reflected by the pass book. Defendant's exhibit 115 admitted in evidence.

I recognize defendant's A-116 as a check drawn by our bank by defendant Meyers payable to Louis Roth. The check came to the bank through the clearing house, bearing the endorsement of Louis Roth and was charged to H. H. Meyers' commercial account. A-116 admitted in evidence.

As to defendant's 117 the signature of the payee on that appears to be the one Mr. Roth uses. I cannot say whether the check was cashed by the payee.

Defendant's A-117 admitted in evidence without objection.

Q. (By Mr. Simon) Exhibit A-116 is a check dated March 23, 1936, drawn on the Bank America, National Trust & Savings Association, 6th & Alexander Branch, Los Angeles, California. Pay to the order of Louis Roth, \$5,000. H. H. Meyers. Endorsed by Louis Roth.

Defendant's A-117 is a check payable to Louis Roth of the sum of \$1900 drawn on the Pacific National [404] Bank of Seattle under date of March 23, 1936, \$1900.00, H. H. Meyers. On the back there is a stamp Union Bank & Trust Company, Los Angeles, March 22, 1936, endorsed by Mr. Roth.

(Testimony of Albert L. Clark.)

From the time I first met Mr. Meyers he was away from Los Angeles a great deal and in his absence his wife made deposits to his account from time to time. As far as I know, deposits made prior to 1934 to Meyer's account would almost invariably show to have been made in currency. Plaintiff's Exhibit 188 is dated prior to my presence in the bank, but seems to be like one that was there when I came.

Mr. and Mrs. Meyers have a safety deposit box in their joint name in our bank as far as I know they have had all the time I have been there. When Mrs. Meyers made the \$50,000.00 deposit in \$1000.00 bills I believe she did go to the box in that case.

Re-Direct Examination

By Mr. Hile:

Defendant's A-115 does not reflect all the withdrawals. I could not tell from defendant's A-115 what the balance was in the bank.

Re-Cross Examination

By Mr. Simon:

It is not the purpose of the passbook to reflect either withdrawals or balances. It is merely a memorandum of deposits. [405]

LYLE C. KUNEY,

A witness called on behalf of the Plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am Manager of the Investment Department of the Seaboard Branch of the Seattle First National Bank, Seattle.

Exhibits 241 to 245 inclusive are permanent records of the Seaboard Branch and as manager I am the custodian and have been in the department 8 years. I met William Markowitz and J. F. Simons.

Exhibit 241 is a by-order signed by William-Markowitz for \$15,000 of government bonds. He required the bonds delivered in Los Angeles on a certain date.

Exhibit 242 is a confirmation letter of the Peoples Gas and Oil Company by William Markowitz requesting delivery to J. F. Simons at the Security First National Bank, Los Angeles not later than Friday morning following the date of the letter September 30, 1935.

Exhibit 243 is a selling order for the \$15,000 bonds placed by Markowitz May 11, 1937.

Exhibit 244 is a receipt to the Peoples Gas and Oil Company for the bonds to be sold.

Exhibit 245 shows amount received for the bonds and the credit of the amount to the Peoples Gas and Oil Company.

Exhibits 241-245 admitted in evidence.

FIRST NATIONAL BANK OF SEATTLE
INVESTMENT DEPARTMENT

Seattle, Wash.

Subject to the rules, regulations and customs of the exchange in which this order is entered, and any rules, regulations and requirements of its Board of Directors, and all amendments that may be made therein.

BUY

for my open accounts and risk

9/13/47-45

mkf

The undersigned hereby acknowledges that orders to purchase bonds or stocks or other securities are taken by the bank as my agent and will be executed solely at my risk; and that in executing orders which must be handled through brokers and/or members of exchanges, the bank will deal with any broker designated by me and if not so designated, will deal only with individuals or concerns which it considers reputable, but the bank shall not be liable for the responsibility or acts of such broker. The undersigned further acknowledges that the bank is making the above purchase solely at the request of the undersigned and that any explanations and statements, if any, made by you about the security or condition of the ordered purchased, were made by you in good faith, and you did not purport to have all the information relative to the above security or condition, nor do you guarantee the accuracy of information given.

Stock Name _____
to be Registered Address _____

Signed _____
Address _____

Confirmed 15th @ 100/100 15,022.81 Payment teleph. ✓
Plus Interest 9/15 to 10/1 20.63
Total \$15053.44
Commission 18.75 Ins. & Post. 18.75 Delivery @ Los Angeles
Total \$15072.19 Executed Through Norton
By Ramsey

(Testimony of Lyle C. Kuney.)

PLAINTIFF'S EXHIBIT NO. 242

[Letterhead]

PEOPLES GAS AND OIL CO.

Of Washington

September 30, 1935

First National Bank
Seaboard Branch
Seattle, Washington

Attention, Mr. L. C. Kuney, Bond Dept.

Dear Mr. Kuney:

[Marginal Note]: 100 7/32

Will you please have delivered to Mr. J. F. Simons at the Security First National Bank of Los Angeles, Main Branch, the Fifteen Thousand Dollars (\$15,000.00) worth of Treasury 3's of 1948, that you were today authorized to purchase for our account.

[Marginal Note]: 2¾

I thank you very much for your kind courtesy in this matter, and will anticipate delivery not later than Friday morning of this week.

Very sincerely yours,

PEOPLES GAS AND OIL COM-
PANY

W. MARKOWITZ

William Markowitz

WM/EC

Vice President

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of Lyle C. Kuney.)

\$15,032.81 shown by exhibit 241, dated September 30, 1935 was the purchase price plus interest and plus commission. The order was for 3% bonds, but due to the fact that they had to be delivered in Los Angeles at a certain date, we were unable to get the 3's and had to buy the 2¾ in Chicago. [406]

The selling order was dated May 11, 1937. The bank received the order, exhibit 243, signed Peoples Gas & Oil Company by J. F. Simons. Underneath is shown the amount of the sale, \$15,388.75. Exhibit 244 gives the payment numbers 210L and 230L.

Q. I would like to refer to Government's 191, which is a record of collateral ledger of the loan to H. Harry Meyers, \$13,520, showing two Treasury Bonds deposited as collateral, one for \$10,000, No. 210L and one for \$5,000, No. 430L.

To show that these notes are the same, your Honor. That is my point.

No Cross Examination. [407]

WILLIAM C. SPENGLER,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I have been a clerk for thirteen years in the Investment Department of the Seattle, First National Bank, main office.

(Testimony of William C. Spengler.)

Exhibits 246 to 253 are permanent records of the bank kept in regular and usual order of business.

Said exhibits admitted over objection as to immateriality and against 247 as not best evidence. (There was no exhibit 251, the number being a mistake in marking).

No Cross Examination. [408]

PLAINTIFF'S EXHIBIT No. 246

S-2 First National Bank of Seattle

INVESTMENT DEPARTMENT

No. SA 11509

Peoples Gas & Oil Co.
4th & Pike Bldg.
Seattle, Wash.

Oct. 7/35 as of Oct 4th

I acknowledge your Purchase For My Account through Mr. Kuney and I acknowledge receipt from First National Bank of Seattle of the following described securities which are delivered against payment only. If they are to be retained temporarily for the purpose of verification, it is agreed that such holding shall be as agent for the First National Bank of Seattle.

The undersigned hereby acknowledges that orders to purchase bonds or stocks or other securities are taken by the bank as my agent and will be executed solely at the risk of the undersigned; and that in executing orders which must be handled through brokers and/or members of exchanges, the bank will deal with any broker designated by the undersigned, and if not so designated, fill deal only with individuals or concerns which it considers responsible, but the bank shall not be liable for the responsibility or acts of such broker. The undersigned further acknowledges that the bank is acting solely at the request of the undersigned and that any explanations and statements, if any, made by you about the security or securities, were made by you in good faith, and you did not purport to have all the information relative to the security or securities, nor do you guarantee the accuracy of information given.

(Testimony of William C. Spengler.)

Signature

Oct 7-1935

Par Value	Security	Interest Dates and Maturity	Price
15,000	U. S. Treasury 2¾ % Bonds	9/15/47-45	100 7/32

We will charge your account with our Seaboard Branch in payment and will have bonds delivered to Mr. J. F. Simons at the Security First National Bank of Los Angeles, Main Branch. Your letter of Sept. 30th.

Principal	15,032.81
Accrued interest from 9/15 to 10/4	20.65
	<hr/>
	15,053.44
Comm.	18.75
	<hr/>
Amount Due.....	15,072.19

Receipt

[Signature]: Illegible.

[Endorsed]: Filed Oct. 26, 1942.

J. E. VANCE HORNING,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am in charge of the public funds and Safe Keeping Division of the bank and banking department of the Security First National Bank of Los Angeles. I have been with the bank for twenty-five years. The A.B.A. number is 6-3.

Government's exhibit 254 is a receipt signed by J. F. Simons for \$15,000 par value, United States Treasury Bonds, 45-7, 2 ¾ %, one at \$5,000 No. 430L and one at \$10,000 No. 210L. It is a record of the

(Testimony of J. E. Vance Horning.)

bank kept in the regular course of business permanently maintained.

No. 255 is the letter addressed to the Security First National Bank by the First National Bank of Seattle Investment Department dated September 30, 1935 concerning these bonds.

No. 256 is a copy of a letter of the Security First National to the Seattle First National advising that we had complied with the instructions in the letter. These were original records of the bank in my custody and control and kept in the usual and regular course of business.

Exhibits 254 and 255 and 256 admitted in evidence over objection on the question of materiality but not as to identification.

PLAINTIFF'S EXHIBIT NO. 254

RECEIPT

October 4 1935

Received from Security First National Bank of Los Angeles a/c First National Bank of Seattle: \$15,000. pv U. S. Treasury Bonds of 1945-47, 2¾% 1/5,000. #430L, 1/10,000. #210L 3-15-36 & subsequent coupons attached

J. F.

J. F. Simons

J. F. SIMONS

[Longhand Note]: California drivers license Al-malkia Temple card and check on 1st Nat'l bnk Seattle. Joshua F. Simons.

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of J. E. Vance Horning.)

BOARD'S EXHIBIT NO. 255

FIRST NATIONAL BANK OF SEATTLE

Established 1870

Seattle, Washington

Sept. 30, 1935

Investment Department

Security-First National Bank of Los Angeles, Los Angeles, California.

Gentlemen:

The First Boston Corporation will deliver to your office for our account, within the next few days, \$15,000 U. S. $2\frac{3}{4}\%$ Treasury bonds due 1947/45.

When the bonds are delivered, we shall appreciate your making payment to The First Boston Corporation at the rate of $100\frac{7}{32}$ plus accrued interest to date of delivery—charging our account to cover.

The bonds are to be delivered against receipt to Mr. J. F. Simons, upon proper identification.

When the transaction has been completed, will you kindly notify us by letter? Thank you kindly for handling the clearance for our account.

Yours very truly,

[Signature Illegible]

MEC

Assistant Cashier.

[Endorsed]: Filed Oct. 26, 1942.

(Testimony of J. E. Vance Horning.)

PLAINTIFF'S EXHIBIT NO. 256

October 4, 1935

First National Bank

Seattle, Washington

Attention: Investment Department

Gentlemen:

As instructed in your letter of September 30, we have today charged your account \$15,053.44 and paid a like amount to the First Boston Corporation against delivery of \$15,000 United States Treasury bonds, 2¾% of 1945-47 and have re-delivered them to Mr. J. F. Simons.

Inclosed is our duplicate advice of charge together with a copy of the receipt we have taken from Mr. Simons.

Yours very truly,

SIDNEY WYCKOFF

Assistant Vice President

JVH:MHJ

Inclosure

[Endorsed]: Filed Oct. 26, 1942.

Exhibits 257-260 are photostatic copies of permanent records of my bank made and kept in the ordinary course of business. (257, duplicate of 258, ommitted).

Said exhibits admitted in evidence. [409].

With reference to government's 254, J. F. Simons called at my office in Los Angeles and asked if we had \$15,000 United States Treasury for delivery to

(Testimony of J. E. Vance Horning.)

him. I delivered the bonds to him. They are those set forth in the exhibits handed me. The delivery was made on October 4, 1935.

No Cross Examination. [410]

N. S. PENROSE,

A witness called by the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am at the present time manager of the Hoquiam Branch of the Peoples National Bank of Seattle. I have been with the Peoples Bank since 1930 and formerly was with the Peoples Bank and Trust Company.

Exhibits 261 and 262 are permanent signature records of the Peoples Bank and Trust Company, which is now the Peoples National Bank. They were made and kept in the regular course of business of the bank.

Exhibit 153 is a check of the Peoples Gas and Oil Company for \$28,000 drawn on the Peoples National Bank and payable to that bank used to purchase a cashier's check for \$28,000 payable to the Bank of America, which is exhibit 193.

Exhibits 261 and 262 admitted in evidence without objection.

No Cross Examination. [411]

M. W. STREET,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am Auditor of the Seaboard Branch, Seattle First National Bank and have been such about a year and a half.

Exhibits 263, 264 and 265 are permanent records of my bank and in my custody, made and kept in the usual course of business.

Said exhibits admitted.

No. 263 is a signature card of the Peoples Gas and Oil Company, J. F. Simons and William Markowitz. I cannot be sure of the date.

No. 264 are two signature records both of the Peoples Gas and Oil Development Company, two signatures required.

No. 265 is a signature card of Peoples Drillers, William A. Broome and Munkres, two signatures required, opened with a check of H. H. Meyers.

No Cross Examination. [412]

H. E. CHAPMAN,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am County Auditor for Benton County, Washington and have been such for eight years.

(Testimony of H. E. Chapman.)

Rattlesnake Hills are located in Benton County. I have examined the records of the county to ascertain whether there are any leases of record in favor of the Peoples Gas and Oil Company. I found none. [413]

H. C. HALLOWELL,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am Assistant Auditor of the Pacific National Bank in Seattle. The A.B.A. Number is 19-28. Exhibits 266 and 267 are permanent records of the Pacific National Bank and I am custodian. They are made and kept in the usual course of business. I never had anything to do with the execution of the card and was not present when the information was given or the card filled out. I recognize the card as the record of our bank. I do not know in whose handwriting the notation at the bottom of the card is, being "H. H. Meyers, The Gaylord, 355 Wilshire Blvd., Los Angeles, California". I assume H. H. Meyers is the signature of the depositor.

Exhibits 266 and 267 admitted in evidence without objection.

No Cross Examination. [414]

E. C. OLDFIN,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am in charge of the New Business Department of the Pacific National Bank and have been connected with the bank for thirteen years. I know defendant Meyers. I first met him in about December, 1935. I handled the card, Government's Exhibit 266. It is a record of the bank pertaining to Mr. Meyers' account in our bank. It is the original.

Mr. Meyers came in to the bank and sat at my desk and executed this card. The signature, the Gaylord address and the street address are in Mr. Meyers' writing. On account of the fact that he had taken up the full line there I had to write the rest of the information on the bottom of the card, the fourth line. I got the information from Mr. Meyers. (Exhibit 266 read by Mr. Hile).

PLAINTIFF'S EXHIBIT No. 266

H. H. MEYERS, ~~Plaintiff~~ Defendant WIN 15 1938 Individual

To The Pacific National Bank of Seattle / 4580

We find authorized signature which is in full payment of the principal of the transaction of other
 to the conditions as printed on the back of the check.

AUTHORIZED SIGNATURE

ADDRESS

RECEIVED ON DEPOSIT

DATE

BY

FOR

THE

PACIFIC NATIONAL BANK OF SEATTLE

WASHINGTON

DEC 10 1935

H. H. MEYERS, M. D.

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1. H. H. MEYERS, M. D.

[redacted]: Filed Oct. 26, 1942.

(Testimony of E. C. Oldfin.)

Exhibit 267 was the opening deposit to that account and I took that. One of the three items of the deposit on opening the account was a \$5,000 check bearing the number, 16-77, Union Bank and Trust Company payable to defendant Meyers and signed by Meyers.

Cross Examination

By Mr. Simon:

The deposit made by Mr. Meyers on that occasion was \$14,000 and some odd dollars.

My recollection is that Meyers came in himself. I invited him to my desk and he sat opposite me. He had a [415] little larger amount than usual and I was more or less interested and when I wanted to know what his occupation was he told me he was the President of the Peoples Gas and Oil Company, but before that he had told me that he was a doctor and I asked him if he were a physician or surgeon and he said yes, but he wasn't practicing. To the best of my recollection it is not a fact that Meyers was introduced by Dwight Hartman and that Hartman said Meyers was vice-president of the Peoples Gas and Oil Development Company. I found later that the name Peoples Gas and Oil Company was an error. I wrote that down. I cannot say that he told me he was vice-president of the Peoples Gas and Oil Development Company. He did not write the words physician and surgeon himself, nor the M.D. after his name. [416]

ALBERT L. CLARK,

Recalled, having been previously sworn, testified as follows:

Cross Examination

By Mr. Simon:

I have made a memorandum from the records of the Bank of America, 6th and Alexander Branch, of certificates of deposits purchased by defendant, H. H. Meyers at my bank. List of certificates read beginning with one for \$10,000 of July 16, 1930 paid November 10, 1930.

A. Yes, sir. For \$10,000. That was paid on Nov. 10, 1930. 4-16-30—this seems to be out of order—, I mean in the date—it is for \$20,000 paid on 2-4-31. 11-10-30, another one for \$6,000, paid on Feb. 20, 1931. Feb. 24, 1931, he purchased one for \$25,000, and that was paid on June 15, 1931. On the 15th of June he purchased one for \$10,000 and it was paid on October 3, 1931. On October 3, 1931, \$5,000. May 18, 1932, \$5,000; paid July 24, 1933. September 22, 1931 for \$3,000, paid—that should be '32, paid on July—the 24th of July, 1933. May 12, 1933, four drafts, four Certificates of Deposit, one for five, another for five and one for ten. They were all paid on September 8, 1933. On July 22, 1933, \$13,000 paid on July 24, 1933. July 24, 1933 for \$5,000 paid in March, on March 29, 1934. Another one purchased on August of 1933, the 17th for \$7,000, paid 3-29-34. Purchased 908-34 for \$25,000, paid March 8, 1935. March 8, 1935 for \$25,000 paid Sept. 8, '35.

It is not a fact that the purchase of those certifi-

(Testimony of Albert L. Clark.)

ates were all made with currency. The certificates were merely renewals in most cases. The original one was not purchased with currency. The offsetting entry has usually been in that case a New York draft on the Guaranty [417] Trust Company of New York which was issued previously by our bank and turned in for a Certificate of Deposit. The New York draft was purchased by currency.

Re-Direct Examination

By Mr. Hile:

A man comes in and buys one of these certificates which says that on a certain day it matures and the holder will receive a certain interest. He can draw his money or have a renewal issued for the same amount for six months and there must be a renewal every six months.

Re-Cross Examination

By Mr. Simon:

Defendant's Exhibit A-118 memorandum by Albert L. Clark admitted. [418]

JOHN S. SWENSON,

Recalled, having been previously sworn, testified as follows:

Cross Examination

By Mr. Simon:

I did go to the McNeil Island Penitentiary and interviewed Sam Markowitz. I do not remember the date. I do not think it was shortly after De-

(Testimony of John S. Swenson.)

cember 7, 1941. I think it must have been at least a few months thereafter. I could probably look it up and give that exactly. Markowitz was not in quarantine as far as I know. He was in regular employment over there in the penitentiary, as far as I was aware.

There was no mention of any executive clemency or application for executive clemency. As far as an application for parole was concerned, I had made a report on that immediately following the end of the trial and the sentence of the defendant on each one of those that had been convicted, so that I would have nothing further to do with any application for parole.

I did not make any statement such as incorporated in the question as to activity that Sam Markowitz might expect in his behalf in return for information regarding payment of money by the Peoples Gas and Oil Company, or by Markowitz and Simons to Dr. H. Harry Meyers. I did ask him if he would tell me what the relations were between his brother and Joshua Simons and Dr. Meyers and whether he knew of an agreement, a contract, that had been signed by them before they came up here under which they laid out their plans of operation and if he knew how that had been carried out; if he knew how much money had gone from the selling organization to Dr. Meyers for the purpose of carrying out the story that he was paying the expenses of developing, and all of that. He absolutely refused to answer. He said: [419] "I have

(Testimony of John S. Swenson.)

taken my dose, and I won't say anything more." Furthermore he said if he did know something he would not tell me. [420]

STIPULATION WITH REFERENCE TO THE TESTIMONY OF A. J. BURGMAN.

Mr. Hile: If your Honor please, before we start on this witness, I think there is part of a stipulation we can finish up, Mr. Simon, on these checks.

As I understand, in regard to the first check in Government's 159, being a check of the Peoples Gas & Oil Company to S. Markowitz for \$30,000, that it is stipulated that if Mr. A. J. Burgman, payroll teller of the Seaboard Branch of the Seattle First National Bank were present, he would testify that on August 14, 1936 this check was presented by J. F. Simons who received thirty \$1,000 bank notes in payment thereof, the check bearing the signature of S. Markowitz and J. F. Simons,— or the purported signatures thereof.

Mr. Simon: I will stipulate with you that it was endorsed by the payee, S. Markowitz and by J. F. Simons.

Mr. Hile: Any other stipulation?

Mr. Simon: No. I mean except one on the general objection that it is irrelevant and incompetent, all over that objection. I stipulate that if the witness were called he would so testify.

Mr. Hile: The first check has been detached

(Testimony of A. J. Burgman.)

from 159. We will mark the balance 159-A, if you have no objection.

Mr. Simon: No.

Mr. Hile: And with respect to Government's 168 which is a separate check, which is a check of the Peoples Gas & Oil Company, dated February 26, 1936, payable to the order of "Cash" in the amount of \$60,000, that this check was likewise presented to A. J. Burgman, and if [421] present he would testify he being the paying teller of the Seaboard Branch of the Seattle First National Bank, that on February 27, 1935, Mr. Simons presented this and was given sixty \$1,000 bank notes; and that the check bears at least the purported signature of J. F. Simons.

Mr. Simons: I am willing to stipulate that it is a fact, over the objection heretofore noted, your Honor, subject to that objection and exception I am willing to stipulate that Mr. Burgman, if so called, would so testify; and that the endorsement of J. F. Simons on the back of the check was in point of fact the true and correct signature of J. F. Simons who signed the check as president, and that the bank paid the \$60,000 to Mr. Simons as stated.

Mr. Hile: I further understand, in reference to Government's 170, which is a single check——

Mr. Simon: Has this been admitted?

Mr. Hile: It has all been admitted.

The Court: I understand all of these checks have been admitted. [422]

STIPULATION WITH REFERENCE TO THE
TESTIMONY OF WENDELL WYATT

Mr. Hile: With reference to Government's 170, which is a single check, and which is a check of the Peoples Gas & Oil Company, dated April 15, 1935, payable to the order of J. F. Simons, in the amount of \$10,000, that if Mr. Wendell Wyatt, payroll teller of the Peoples Bank & Trust Company, Seattle, were called to testify, that he would testify, that on April 19, 1935, this check was presented by J. F. Simons, at which time Mr. Simons received ten \$1,000 bank notes, the check bearing at least the purported signature of J. F. Simons.

Mr. Simons: I object to it on the ground that it is irrelevant and immaterial.

The Court: Objection overruled. Is this an offer of proof?

Mr. Simon: Exception. And subject to that objection I am willing to stipulate as counsel has stated, and I am willing to stipulate with counsel further that the endorsement on this check is the valid endorsement of the payee of the check, and that the amount of the check was paid by the bank to the payee upon his endorsement, in the sum of \$10,000, as counsel has stated.

Mr. Hile: It is further the understanding, in reference to Government's 153, being the third check therein that if Mr. Wendell Wyatt whom I have previously identified as payroll teller of the Peoples Bank & Trust Company, Seattle, were here, that he would testify that with reference to this check, being as I say, the third check of plaintiff's

(Testimony of Wendell Wyatt.)

153, that that check being a check of the Peoples Gas & Oil Company dated May 15, 1935, payable to the order of H. H. Meyers for \$10,000 and bearing at least the [423] purported endorsement of Dr. H. H. Meyers,—

Mr. Simon: I will stipulate, your Honor, that that is the actual signature of H. H. Meyers the payee of the check.

Mr. Hile: —that Mr. Hyatt would testify that on May 13, 1935 this check was presented to him by the defendant Meyers, at which time he gave the defendant ten \$1,000 bank notes.

Mr. Simon: I will stipulate that Mr. Wyatt, if called, would so testify.

Further Stipulation: That with respect to Government's Exhibit 162, first check thereof, that Mr. Wyatt would testify that Peoples Gas and Oil Company check dated August 15, 1935 payable to W. Markowitz for \$2,168 was presented by William Markowitz and payment in notes of large denominations.

Likewise as to the second check in Government's Exhibit 162 for \$128 and payable to William Markowitz, dated August 15, 1935, and to the third check in Government's 162 the check for \$2,296 dated August 31, 1935 payable to the order of William Markowitz was cashed by him and notes of large denominations received therefor.

Likewise that the first check in Government's 163 dated August 15, 1935, payable to J. F. Simons,

(Testimony of Wendell Wyatt.)

in the sum of \$5,128 was cashed by William Markowitz and large bank notes received therefor.

Likewise with reference to the second check in Government's 163, dated August 31, 1935 payable to J. F. Simons in the amount of \$5,128 and bearing his endorsement, and that of William Markowitz was cashed by Markowitz and bank notes of large denominations received therefor.

That an error was made in the stipulation relative to the check in Government's 168, the date of the check was February 26, 1936 and the year 1935 was the error. [424]

R. E. WISE,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

Before the Prosser State Bank of Prosser, Washington became a branch of the old First National Bank I was with the Prosser Bank. I had some connection with the escrow relating to leases on Rattlesnake Hills. I held them in escrow under an agreement between the abstract company and Mr. Broome. Mr. Jenkins of the Abstract Company suffered a stroke six months ago and is not well. Government's exhibit 273 is the escrow agreement mentioned.

Government's 272 is an assignment of the leases

(Testimony of R. E. Wise.)

which together with the document made up the escrow. The leases were to be delivered to Mr. Broome under certain conditions described in the escrow.

Government's 274 is an executed copy of a lease. All the leases in escrow were similar to that. The conditions of the escrow were never fulfilled. The drilling contemplated and required by the escrow was never carried out.

Government's 275 is a copy of a letter to the bank from Mr. Broom releasing the escrow and ordering the leases returned to the Abstract Company. The leases were never delivered to Mr. Broome.

Exhibits 272 to 275 inclusive admitted in evidence.

Cross Examination

By Mr. Simon:

There was some provision for a committee to pass [425] on whether any drilling operations started by Mr. Broome would be sufficient to comply with the terms of the escrow so as to enable the leases to be delivered to him.

From 1932 to 1936 Mr. Broome might have complied with the option by starting drilling operations. There might have been a legal debate regarding it. Finally in September, 1936 Broome wrote to the bank and relinquished his right.

Following Broome's letter on September 29, 1936 the escrow was abandoned and the leases returned to the lessors.

(Testimony of R. E. Wise.)

Re-direct Examination

By Mr. Simon:

Mr. Broome could at any time have obtained possession of the leases by starting drilling operations subject to control by the landowners' committee as to the bonafide character of the operations. There was something also in the lease giving a limited time.

The Peoples Gas and Oil Corporation never, to my knowledge, held any interest in the escrow agreement or the Peoples Gas and Oil Company.

[426]

WARD B. BLODGETT,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am an engineer and geologist. I never authorized use of my name as a member of the Geological Advisory Committee, such as shown in Exhibit 21. I wrote advising that I had not authorized such advertising and ordered that the use of my name in the broadcast cease. I believe I received a letter in reply.

Cross Examination

By Mr. Simon:

Defendant's A-119 is my writing. Said Exhibit admitted in evidence. I recall receiving defendant's

(Testimony of Ward B. Blodgett.)

Exhibit A-120. I wrote defendants' Exhibit 121. Exhibits A-120 and A-121 admitted in evidence. I remember the letters, Exhibits A-122 and A-123. I recognize A-124 as a copy of a letter I received from Broome with reference to discontinuance of my name in the advertising of Peoples Gas and Oil Company. Exhibit A-125 was written after I had requested that my name be removed from the advertising matter. Exhibits A-122 and A-123 rejected. A-124 admitted. A-125 rejected. I sent the telegram, defendant's 126, same admitted in evidence.

DEFENDANT EXHIBIT A-122

Ward H. Blodgett .
324 Petroleum Securities Bldg.
714 West Tenth Street
Los Angeles, California

June 23, 1934.

No. 15187

Not Adm.

Mr. W. A. Broome, President,
Peoples Gas & Oil Development Company,
Suite 410, Fourth & Pike Bldg.,
Seattle, Washington

Mr dear Mr. Broome:

An old friend of mine, who is in the oil business, and has spent some time in Seattle recently, called me on the phone the other day and told me, in a sort of facetious way, that he was surprised to find that I was aiding in a program to put the

(Testimony of Ward B. Blodgett.)

State of Washington in the business of distributing gasoline. When I pleaded ignorance as to what he was talking about, he told me that he had seen my name used in connection with publicity about an oil and gas prospecting venture in Washington and that the promoters seemed to be very definitely linked up with the sponsors of an initiative petition to permit the State to distribute gasoline. He said that he had seen newspaper clippings quoting you as saying that the major oil companies were gouging the public on price and that statements over the radio lead him to conclude that I was part and parcel with the group endeavoring to put over the initiative.

I am wondering now if this friend of mine knows what he is talking about. I cannot, for my part, see [428] that the success of this initiative would be of any aid to your planned operations in Washington; as a matter of fact, I should think that it would be harmful in the long run. I understand here that all of the independent companies of California distributing gasoline in Washington are against the bill, and I can't help but feel that it will do us no good as a potential producing oil company to foster the measure.

It probably is true that the price of gasoline is too high in the northwest, but I should think that if the State goes into the business on its own hook it would create a situation still worse and would not help us if you succeed in developing oil.

(Testimony of Ward B. Blodgett.)

Of course I am so far away that I do not know all of the angles which you have to face, but I hope you do not go too strong in your propaganda against the major oil companies. I can feel the reactions against myself clear down here because my name has been mentioned in connection with your company and of course you know my business is nearly all with the large companies.

Let me know the true situation so that I can combat any adverse criticism down here.

Has the company of which Roberts and you and I participate been organized?

With best wishes for successful development I remain

Very truly yours,

WARD B. BLODGET

WBB:DD [429]

No. 15187

DEFENDANT EXHIBIT A 123

Objected to by Govt.

June 26, 1934

Mr. Ward B. Blodget Esq.
342 Petroleum Securities Bldg.
714 West 10th Street
Los Angeles, California

My dear Mr. Blodget:

I was glad to receive your letter of June 23 and hasten to let you know the true situation.

(Testimony of Ward B. Blodgett.)

Neither my company or myself have ever been linked up in any way with the initiative petition, the sponsors of which seek to permit the state to distribute gasoline. My personal attitude is precisely the same as your in the matter, in that I fail to see how it would benefit either major or independent oil companies. I have always adopted an attitude diametrically opposed to either participation in or interference with private enterprise by either state or federal officials. I believe there is altogether too much damnable paternalism on the part of petty politicians now—without adding to the situation.

The price of gasoline is undoubtedly very high throughout this area, but it seems to me that the only thing that will tend to cure that situation is the establishment of commercial production within the confines of the state.

Regardless of any quotations charged to me, I would welcome the presence of Mr. Kingsbury himself at any of [430] the meetings or public gatherings which I have addressed up here. I have never criticized the major companies, on the contrary, I complimented them very highly on the very business-like manner in which they have protected their marketing interests here. I can see no necessity for hammering the major companies in order to build interest in our project, as the interest is extremely keen now.

I hope that the foregoing will tend to clarify the situation for you as I should deeply regret any

(Testimony of Ward B. Blodgett.)

action of mine that might, even inadvertently, cause loyal friends like yourself any embarrassment or put you in a position where an explanation was required.

Answering your last question, the status of the participation in my interest is not yet settled, but I believe it will not take long to clear it up after Dr. Meyers returns here—which I anticipate will be in the next two weeks.

I have not as yet acknowledged the receipt of the last letter you sent me in answer to my inquiry as to geological services. I have the situation in mind, however, and thank you most sincerely for the suggestions.

With kindest regards, old friend, and best of good wishes,

Yours very sincerely,

PEOPLES GAS AND OIL DEVELOPMENT CO.,

WILLIAM A. BROOME

President

WAB:LFN [431]

(Testimony of Ward B. Blodgett.)

DEFENDANT'S EXHIBIT No. A-124

July

First

1

9

3

5

Mr. Ward B. Blodgett
714 West Tenth Street
Los Angeles, California

My dear Mr. Blodgett:

I regret exceedingly my inability to answer before this time your letter of May 31, 1935.

The Peoples Gas and Oil Development Company is not selling, nor has it at any time ever offered for sale, anything to the public.

The leases on Frenchman Hills are owned by the Peoples Gas and Oil Company, and they are conducting a campaign to distribute the same in the hands of the public, and have at no time sold other than leases.

I have taken up with Mr. J. F. Simons, President of the Peoples Gas and Oil Company, the subject matter of your letter, and have advised him of your request of me to discontinue using your name as a member of my Geological Advisory Committee. I have assured him that at your request I will discontinue to use your name as a member of that committee.

(Testimony of Ward B. Blodgett.)

Mr. Simons has assured me that in the course of a few days, when the present supply of literature shall have become exhausted, he will discontinue using your name in his literature.

Very sincerely yours,

WILLIAM A. BROOME

WAB/EC

[Endorsed]: Filed Oct. 27, 1942.

Re-direct Examination

By Mr. Hile:

Q. Mr. Blodgett, with reference to Defendant's A-119, in your letter to Mr. Broome, saying you would be glad to serve on any geological advisory committee, did you ever perform any such service, —that is prior to July 1, 1935? A. No. [427]

Broome was coming up here to develop property he had under lease and I agreed to serve in the project if he should select me. He never called upon me prior to June 1, 1935. At the time of the discussion Broome said nothing about any sales to the public.

Exhibit A-120 was a letter suggesting that I come up, that he was going to send for me shortly and he wanted me to let him know as quickly as possible when I could get up here and I wrote him that I couldn't possibly come at that time and suggested that Mr. Kottick be employed. Mr. Kottick did not go nor anyone else from my office.

(Testimony of Ward B. Blodgett.)

With respect to Defendant's A-126, there is no legal control over the use of reports. If you make a report and receive a fee it becomes the property of the one who buys it, but naturally an effort is made by the one that gives the report to see that it is not used for any illegal purpose or anything reflecting against the Association of American Petroleum Geologists, of which I am a member. I felt that the use of a report for advertising in selling to the public was prohibited. That is what I had reference to in my telegram. Some request was made regarding the use of publication of my letter and I wired back that I did not want them to do so. [432]

DWIGHT C. ROBERTS,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am at present the assistant general manager of the Sperry-Swan Company. I am a geologist and petroleum engineer by profession. I never authorized the use of my name in connection with a Geological Advisory Committee as shown in exhibit 21. I saw a broadside like it, or similar to that many years ago. It was called to my attention by the American Association of Petroleum Geologists. I wrote to Mr. Broome and told him I did not want

(Testimony of Dwight C. Roberts.)

my name used in that way or have anything to do with it. I received a letter from him in which he said it would not be used, I believe, after they had finished the advertising material they had printed.

Government's Exhibit 277 is a letter to the same effect from Mr. Simons. Exhibit 277 admitted in evidence and read by Mr. Hile.

I had never heard of these companies before I saw my name used. I was never employed by the Peoples Gas and Oil Development Company, or the Peoples Gas and Oil Corporation, or the Peoples Gas and Oil Company.

Cross Examination

By Mr. Simon:

I recognize Defendant's A-127 as a carbon copy of a letter, the original of which I received from Broome on or about the date it bears. Said exhibit read in evidence.

Defendant's A-128, 129 and 130 are agreements with Mr. Broome, I think in March, 1933. As to 130 I would have to read the whole thing through to state whether it is a [433] report that I made. I did not make any examination for Mr. Broome. The report was written on certain work I had done previously and in consulting geological reports and papers that were written merely as a preliminary report.

Subsequent to that report, in February or March of 1933 I made an examination of the structure for Mr. Kim Hollins. I believe I was up there about

(Testimony of Dwight C. Roberts.)

May of 1933. Defendant's A-130 is a report I made on or about February 23, 1933, the date it bears. That is my signature.

Exhibit A-130 for identification, offered but rejected.

I made the report at the request of Mr. Case, formerly of the Division of Oil and Gas of the State of California, who knew Mr. Broome and through whom I met Broome, their idea being to interest some substantial companies or individuals in developing this land.

These agreements were made with the idea that some company or individual, or group of individuals, who were familiar with the oil business, and the hazards of wildcat drilling would finance a well there to see what could be found underneath the basalt. Briefly, that was the deal. That had nothing to do with the report which had already been written.

I recognize A-131 as a carbon copy of a letter received from Mr. Broome on or about the date it bears. Said Exhibit rejected after argument.

No. 15187

DEFENDANT'S EXHIBIT No. A-131

Objection by Govt.

June 1st, 1934

Mr. Dwight C. Roberts,
2000 West 12th Street
Los Angeles, California.

My dear Pop:

I wrote you under date of April 25th. but up to

(Testimony of Dwight C. Roberts.)

now have received no word from you, consequently, I am compelled to believe that you failed to receive my letter. For that reason, I am enclosing copy of it. Otherwise, this letter might not make sense.

Things are moving along very nicely and under the most favorable of auspices and everything is being run as clean as a "hounds tooth".

We are going over specifications at this time for the putting in of a heavy duty standard rigging. I wish you would let me know immediately if you know of a first class cable equipment that can be obtained in California. I have one outfit in mind in Wyoming which we might be able to use, but in California where cable is not being used much any more. I would appreciate a response from you on this.

I am expecting and hoping to be able to turn you loose on some real work up here very shortly, provided your other duties do not render your services unavailable, and wish you would let me know how things are shaping up for you so that I shall know what to do. I also wish you would let me know what those services are going to cost me over periods reaching from one month up. [435]

I had the pleasure of a visit from your friend Mr. Curtiss, Geologist, on Monday of this week. He brought a friend of his with him and visited for some considerable time. He is on his way to Alaska. We had quite an interesting talk together in which he told me of the circumstances on which he parted from you some two weeks previously. I

(Testimony of Dwight C. Roberts.)

wish I had been with you but I am glad to know that you are still as capable as ever along those particular lines.

Mr. Shelton Glover, State Geologist in charge of Non-Metallic Minerals Division for the newly created State Natural Resources Conservation Board here, visited the well with me about ten days ago. We are having splendid co-operation from him and his chief, Dr. Culver. We are running 12½" casing in the hole and the prospects look tremendously interesting.

I had a fine letter from Kim Hollins a few days ago and I am asking him to please let me hear from him at his earliest convenience.

Hoping to have the pleasure and privilege of seeing you up here very soon, please believe me to be as ever,

Your sincere friend,

WILLIAM A. BROOME

WAB; FB [436]

I remember very well Defendant's A-132 as a letter I wrote to Broome on or about the date it bears. Said Exhibit admitted and read to the jury by Mr. Simons. [434]

DAY KARR,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am regional administrator for the Securities & Exchange Commission at Seattle and have been with the commission since October, 1935.

I was stationed at Seattle in 1936. I had occasion in that year to have before me defendant Meyers and defendant Markowitz in connection with an inquiry regarding the activities of the Peoples Gas and Oil Company and the sale of oil leases in the State of Washington, and other states in the region.

Defendants Meyers and Markowitz and other members of the Peoples Gas and Oil Company had been to our Seattle office following an inquiry we had made sometime previously. In March, 1936 I happened to be in Washington and a hearing was held, at which Dr. Meyers, Mr. Markowitz and Mr. Simons were present. They appeared voluntarily. That particular hearing took most of the afternoon.

When I arrived in Washington I did not know that anybody from the Peoples Gas and Oil Company was there, but was told that they and attorney Hartman were down in Commissioner Ross' office. J. D. Ross was then a member of the Securities & Exchange Commission. I think it was the following afternoon that we had the hearing.

Mr. Hicks of the Securities & Exchange Commis-

(Testimony of Day Karr.)

sion conducted the examination. I think he asked more questions than anybody else. I was referred to as the [437] Trial Examiner, and as such was supposed to listen rather than ask questions, but I did ask some questions.

In answer to a suggestion that Mr. Markowitz tell his story he made a rather long statement in which he said that the project had first been presented to him by Dr. Meyers down in California, that Dr. Meyers told him he had something he thought he would be interested in up in the State of Washington; that Meyers was pretty well acquainted in that state, and was seeking someone with influence to help him in developing a program which he thought would be profitable. He told Dr. Meyers that he did not know anything about oil development and would not be interested. Thereafter he went to Seattle and there met Mr. Hartman and other men connected with the Northwest Oil and Gas Association and made up his mind that it was a very interesting project and so became interested.

Markowitz said Dr. Meyers had told him he would drill the well, that it made no difference how much time and how much money it took he would drill it.

Relative to the leases the price was named and I think he said it was a pretty stiff price. He said Dr. Meyers offered to sell the leases to him and his associates and the price was fixed at \$65,000 to be paid to Meyers. He said the \$65,000 had been paid to Meyers in instalments.

Markowitz said not one cent from the sale of leases was used to pay Dr. Meyers. He told how

(Testimony of Day Karr.)

the money was raised. He said when they came up from California they had \$100,000, \$65,000 of which was given to Meyers for the purchase of leases and the balance was to be used for their sales organization. He said the money was raised from securities or properties they had in California, which they had sacrificed in order to raise the \$100,000. He said they had used up the [438] entire \$100,000 or more before they got the sales organization going.

The question was asked Mr. Markowitz why purchasers would be willing to pay \$37.50 per acre for the oil rights when an acre of land in fee could be bought for \$1.25. He had no answer to that question. He said the same thing might be said of a man who would buy a suit of clothes for \$50 when he could buy the same suit *as* some other place for \$25.

Markowitz said that Dr. Meyers would drill the well until oil was found or until he was advised by experts that no oil was there.

Mr. Meyers had told me the same thing, not only at that time, but more than once at Seattle. At the time of the examination Dr. Meyers said he was going to drill until either they found oil or were told by experts that no oil was there. He said, as I recall it, that he had *spend* up to that time, in March, 1936, \$213,000 in the drilling operations. There was some conversation about the protection lease holders had and how they would know that he would complete the drilling. He said he had never tackled

(Testimony of Day Karr.)

anything yet that he could not complete. He said there was no written contract with anybody. I asked what would happen in case he died before the drilling was completed and he said that he was pretty young and husky and was not expecting to die very soon. I suggested that it might be advisable to take out life insurance and make it payable to some trustee to carry on the drilling in case of his death. He said he did not think that was necessary. He thought he would live until he had seen the thing through.

He said he was very much interested in the lease holders and intended to protect them. He talked about [439] an oil consciousness in the State of Washington and that the goodwill of the people of the state was of considerable value to him and that he had in mind other projects for the state.

Q. At the time of this examination was anything said by the defendant Meyers about any money being furnished to him by the Development Company?

A. He said not one quarter had been furnished by the Development Company.

I do not recall that I had any conversation with Meyers after his obligation to do the drilling had passed to the Peoples Gas & Oil Development Company. I asked him what reports he was relying on as a basis for his operations on Frenchman Hills. He said he had reports on which he based his activities, that he had reports from Mr. Broome and I think he mentioned some other name. I also asked

(Testimony of Day Karr.)

if Mr. Broome was a geologist and he said he was a capable oil man.

Cross Examination

By Mr. Simon:

I recall defendant's A-133. I received the original of that letter.

Dr. Meyers said he had been paid \$65,000 for those leases. He also said that he had paid up to that time, I think, the figure was \$226,000, but whether the \$65,000 was part of that I do not recall. Defendant's Exhibit A-133 admitted.

I was told that a short time after the return from Washington the sale of leases stopped.

I never recommended anybody to Mr. Meyers to serve in the capacity outlined in the letter in Exhibit A-133. I did not make any recommendation. It did not seem to me to be advisable as a part of our inquiry to do that. [440]

I did not think the letter written by Peoples Gas & Oil Company, being Defendant's Exhibit A-133, was written in good faith, so I did not make any recommendation. If I had recommended anyone I had no doubt Dr. Meyers would put him on the payroll.

Redirect Examination

By Mr. Hile:

I recall distinctly that I told Mr. Markowitz that I had no authority to direct them to stop selling leases, that our office was making an investigation, as he knew, but that I certainly had no authority to ask him to stop selling at that time, and if he

(Testimony of Day Karr.)

stopped it was on his own initiative, although I thought it was advisable to stop. He said they were going to stop.

Frankly the reason I did not recommend anybody to be placed on the payroll to look after the operations was that I had seen some of the literature, in fact a great deal of it, and among other things I considered the possibility that if a man were placed there to check on their operations in their selling campaign, they would advertise the fact that a government employee was on the ground and that the operations were under government supervision. That is one of the main reasons I had for not doing it.

I did not think the letter, A-133, was in good faith because I had been suspicious of the activities of the Peoples Gas and Oil Company for sometime.

Recross Examination

By Mr. Simon:

I probably said in a conversation with Mr. Markowitz, "I believe you are sincere in your request for suggestions in conducting your business, but I am not permitted to make any suggestions, you should consult your lawyers." [441]

W. S. RICH,

a witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a Special Agent of the Federal Bureau of Investigation, United States Department of Justice, primarily making investigations where books and records are involved. I have a *decree* in accounting from District of Columbia College, degree of Bachelor of Commercial Science. I majored in accounting. I have had *experienced* over about 20 years, eight of them in banks and over 13 years with the Federal Bureau of Investigation.

I made an examination of the books and records of the Peoples Gas and Oil Development Company, of the Peoples Gas and Oil Company, and Peoples Gas and Oil Corporation. The records that I examined are now in court. Mr. Munkres, who has previously testified, has explained the details of the setup of the books and the abbreviation and things in connection with them.

The capital stock of the Peoples Gas and Oil Company in April, 1934 as reflected by their books shows \$640, consisting of 640 shares at \$1 par. The records of the Peoples Gas and Oil Development Company do not reflect that the company received or dispersed any cash from April 17, 1934 to March 21, 1935 and had no bank account during that period. There are records reflecting the cost of drilling operations during that time. The amount shown is

(Testimony of W. S. Rich.)

\$37,233.48 expended for drilling operations during that period. [442]

The Peoples Gas and Oil Corporation had no bank account or cash on hand during the period April 17, 1934 to March 31, 1935.

During the period mentioned all expenses for drilling operations were paid by the Peoples Gas and Oil Company. Thereafter the expenses were charged to the Peoples Gas and Oil Corporation by means of a journal entry on the same charges entered on the books of the development company by means of journal entries.

The books show that Peoples Gas and Oil Company and the Peoples Gas and Oil Corporation were merged as of March 31, 1935. All the accounts of the corporation were transferred to the books of the Peoples Gas and Oil Company.

There is a note of the amount of \$65,000 set up on the books of the corporation as of April, 1934, payable to the development company. As of March 31, 1935, the records show \$37,323.48 credited on that note as payment thereon. There was an unpaid balance on that day of \$27,766.52.

From April 1, 1935 to June 30, 1935 the development company had no cash or bank account. All payments for drilling operations were paid by the Peoples Gas and Oil Company which company spent thereon \$18,173.36. That amount was credited as the payment on the \$65,000 note. After the merger the note was the obligation of the Peoples Gas & Oil Company.

(Testimony of W. S. Rich.)

In June, 1935 the sum of \$8,152.59, being a total of what had been advanced to Broome by the Peoples Gas & Oil Company since beginning of operations in April, 1934 was transferred over to the Development Company and the amount was credited on the \$65,000 note. The note was finally paid in full on July 15, 1935, the final payment being by [443] a check of \$2,392.15 from the Peoples Gas and Oil Company to the Peoples Gas and Oil Development Company. After June 30, 1935 the Development Company began to receive cash and to maintain its own bank account. The bank account was opened on July 15, 1935.

I have prepared a summary of the cash receipts and disbursements of the Development Company during the period July 1, 1935 to June 9, 1936, following being the figures:

From the Peoples Gas & Oil Company	\$ 22,000.00
From the Peoples Gas & Oil Company, check, as payment the note	2,392.15
From Dr. H. H. Myers	127,500.00
Miscellaneous receipts	1,958.00
	<hr/>
	\$153,850.68

The \$22,000 from the Peoples Gas and Oil Company additional to the final payment of the note represented loans made to the Development Company. These loans were as follows:

(Testimony of A. J. Zimmerman.)

William Markowitz	290.4 shares
Louis Roth	89.6 shares
J. F. Simons	502.8 shares

On June 6, 1936 the stock was held as follows:

M. M. Black	38.4 shares
B. Blank	89.6 shares
Lewis W. Inzig	32. shares
William Markowitz	290.4 shares
Louis Roth	326.8 shares
J. F. Simons	502.8 shares

Making a total of1280. shares

On July 31, 1936 the following held the stock:

B. Blank	89.6 shares
Lewis W. Inzig	32. shares
William Markowitz	290.4 shares
Louis Roth	365.2 shares
J. F. Simons	502.8 shares

Making a total of1280. shares

I have analyzed the records of sale of leases by the Peoples Gas and Oil Company. They show that from April 19, 1934 to October 15, 1936 the total sales amounted to \$2,855,523.50. During the same period contracts were reinstated in the sum of \$8,430.25 and there were journal adjustments of \$1,848.68, making a total gross sales of \$2,865,-812.44. [461]

During the period April, 1934 through October,

(Testimony of W. S. Rich.)

The \$4,725 item was a loan from the development company which the drillers used to pay the state capital stock tax, when the Development Company increased its stock from 640 shares to 1,500,000 shares. The \$4,000 from the Peoples Gas and Oil Company was a loan, as I recall it, that loan was repaid.

Government's exhibit 279 is a summary prepared by myself from the books and records of the collections on lease contracts and as execution fees by the Development Company from October 16, 1936 to October 22, 1937.

Government's exhibit 279 admitted in evidence without objection.

The Development Company had the following receipts, as shown by the records from June 10, 1936 to October 15, 1936: The Development Company received from June 10, 1936 to October 15, 1936 \$13,452.56, of which \$4,725 came from Peoples Drillers and \$8,565.52 from the Peoples Gas and Oil Company.

On or about October 15, 1936 the drilling operations were turned back by the Peoples Drillers to the Development and all the costs accumulated on the books of the Peoples Drillers were transferred back to the Development Company. At the same time the Peoples Gas and Oil Company transferred over to the Development Company uncollected balances on lease contracts in the approximate sum of \$535,000 to be [445] used in conducting the drilling operations.

The drilling costs transferred at that time cov-

(Testimony of W. S. Rich.)

ered the period from April 17, 1934 to October 15, 1936. These costs had previously appeared on the books of the Peoples Gas and Oil Company, the Peoples Gas and Oil Corporation and the Peoples Drillers. The costs had appeared on the books of the corporation from April 17, 1934 to March 31, 1935. They had appeared on the books of the Peoples Gas and Oil Company from April 17, 1934 to June 30, 1935, and they had appeared on the Peoples Drillers from June 10, 1936 to October 15, 1936. There was a little carry over in the case of the Peoples Drillers up to October 31, 1936, although the transfer to the Development Company occurred as of October 15, 1936.

I have prepared from the books and records of the Development Company a summary of the cash received by that company from October 16, 1936 to October 22, 1937, the date of the receivership. The records reflect loans to the Development Company during that period of \$25,784.90 from the Peoples Gas and Oil Company, and receipts from balances due on lease contracts, \$171,494.52 and from participations \$8,919.50 and from execution fees, \$21,213.56.

The total expenses for drilling operations during the period April 17, 1934 to October 22, 1937, as reflected by the books and records were \$448,869.13. The books of the Development Company and of the Peoples Drillers reflect the sum of \$196,000 advanced by Meyers to those companies during that period.

(Testimony of A. J. Zimmerman.)

At the close of business on October 26, 1937 the Peoples Gas and Oil Company's cash on hand in the bank was \$207.53.

According to the records of the Oil Company the Development Company and the Peoples Drillers, the following sums were received from the various companies by the individuals named:

Milton F. Simons	\$ 9,903.84
M. D. Robkins	11,554.59
William A. Broome	34,377.74
Sam Markowitz	34,860.54
Louis Roth	89,209.88
William Markowitz	184,692.46
J. F. Simons	241,624.51
H. H. Meyers	8,288.19

[463]

Cross Examination

By Mr. Simon:

Roughly speaking it is substantially correct to say that all the income of the Peoples Gas and Oil Company from the sale of leases went for expenses of operations except the \$480,000 put in dividends.

I know of nothing that was improper in the merger of Peoples Gas & Oil Corporation and Peoples Gas & Oil Company. There would no doubt be a tax saving by such merger.

As far as the records go I cannot say why if Broome signed leases directly to the corporation the consideration should not have gone directly to him.

(Testimony of W. S. Rich.)

The books show the following items paid to defendant Meyers.

By The Oil Company as "Exec- utive Expense"	\$2,092.58
By the Peoples Drillers as "Executive Expense"	2,831.76
By the Development Company, as "Executive Expense" ...	2,363.85

\$8,288.19

[447]

I was present at an interview with Dr. Meyers, about September 19, 1936, when Mr. J. S. Swenson, Mr. A. J. Zimmerman and myself were present with him at the Olympic Hotel.

Dr. Meyers at that time said he had been employed in London for a number of years by a firm named Piersons; that he had returned to the United States about 1904 in connection with a bridge project in the east which was not successful and had gone back to London, that years later he was successful in putting over the Golden Gate Bridge deal; that he did that by getting two-thirds of the vote of six counties and to do that it was necessary to spend \$360,000. He was asked if he had put up that money and spent it, and he replied, "Who else?"

(Testimony of W. S. Rich.)

He stated that he had made a profit on the deal from an interest he had in a \$1,040,000.00 contract with Strauss, engineering company of San Francisco.

Dr. Meyers stated that Bill Broome had come to him with leases covering 135,000 acres in the State of Washington. That Meyers had written his friend, John Hartman,, of Seattle, relative to the leases and Mr. Hartman had told him it looked like a pretty good project, or words to that effect, and that thereupon Dr. Meyers got in touch with Simons and Markowitz, whom he had known for eight or nine years. He said at first they were reluctant to go into the proposition, but came up here and looked around and decided they would go into it and he then sold them the leases for \$65,000.00.

He said he was putting his own money into the drilling operations and was not receiving any money from Simons and Markowitz from the sale of leases, or otherwise. [448] He was asked why it was necessary to sell leases, and said, "What good would it do to get oil up here if he did not have the support of the people to get the necessary legislation enactment to combat the major oil companies." He further said he wanted Simons and Markowitz to create oil consciousness among the people up here and get their goodwill so that he could put over the Cascade Tunnel proposition. He said he intended to drill the well down to 7000 feet and that when he quit drilling we would know he was broke. He also remarked that he had been a promoter for 40 years and his middle name was, "Make a Dollar".

(Testimony of W. S. Rich.)

Cross Examination

By Mr. Simon:

My recollection is that Dr. Meyers said he had met Broome in the spring of 1933 or 1934. I do not have any further recollection regarding the time. He told us that he had sold these leases to Markowitz and Simons for \$65,000. He did not tell us that he had these funds earmarked or put away for paying drilling costs.

My recollection is that Meyers did not mention any other contracts or sources of revenue from the Golden Gate venture than the contract with Mr. Strauss. I got the impression that the Strauss contract was his sole source of revenue.

It was part of the deal between the Development Company and the Drillers that the drilling equipment was to be turned over to the Development Company on October 16, 1936, free and clear of all accumulated expenses. About \$535,000 was turned over to the Development Company by the Peoples Gas and Oil Company. [449]

The Development Company received the hole that had been made, plus the buildings and equipment and the leases, with 12½% royalty to the Peoples Drillers.

On October 22, 1937 the Development Company had cash of \$2,764.50, and the balance on the accounts receivable, which had been acquired from the Peoples Gas and Oil Company, as of that date were approximately \$265,000. Some of those contracts had been written off as uncollected. The company

(Testimony of W. S. Rich.)

had collected in cash on those accounts about \$171,000, and \$21,000 in execution fees. The total being about \$192,700 as shown by plaintiff's exhibit 279.

In addition to the \$65,000, which the Peoples Gas & Oil Company or the corporation paid, the Peoples Gas and Oil Company in the spring and summer of 1937 made rather substantial advances to the Development Company.

Redirect Examination

By Mr. Hile:

The figures I have given are according to the books and records. I have no personal information on these matters, except as to the conversation I testified about.

Recalled—Direct Examination

By Mr. Hile:

I have ascertained from the books and records that the drilling costs from April, 1934 to March 31, 1935 were \$37,233.48 and during the period April, 1934 to June 30, 1935 the amount was \$63,559.43, from April, 1934 to June 9, 1936, when the drillers took over, the amount was [450] approximately \$270,000.

From April, 1934 to August 23, 1936, the amount was approximately \$240,000.

From April, 1934 to October 15, 1936, when the Development Company took over it was approximately \$265,000. The total amount I gave yesterday up to October 22, 1937, was \$448,159.36.

(Testimony of W. S. Rich.)

The stock records relative to ownership of the Peoples Drillers show six certificates issued,, all dated June 10, 1936, as follows:

To H. H. Meyers	28 shares
To W. A. Broome	78 shares
To A. Carlson	1 share
H. H. Meyers	109 shares
H. H. Meyers	119 shares
H. H. Meyers	305 shares

640 shares

The records show no further changes in stock ownership. The stock records of the Peoples Gas and Oil Development Company show the following as of April 28, 1934:

Certificate No. 1—R. M. Zeitlin.	240 shares
Certificate No. 2—Lew Roth ...	60 shares
Certificate No. 3—J. F. Simons.	180 shares
Certificate No. 4—William A.	

Broome	160 shares
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640 shares

On August 15, 1934 the four certificates were cancelled and in lieu thereof certificate No. 5, dated August 15, 1934 for 534 shares was issued to Dr. H. H. Meyers, and No. 6 in the name of William A. Broome, same dated August 15, 1934 for 106 shares, total 640 shares.

On August 23, 1935 Certificate No. 6 to William A. Broome was cancelled and in lieu thereof No. 7

(Testimony of W. S. Rich.)

was issued in the name of Dr. H. H. Meyers, Trustee for 28 shares and No. 8 in the name of William A. Broome for 78 shares. [451]

On November 25, 1935 Certificate No. 5 in the name of Dr. H. H. Meyers, dated August 15, 1934 for 534 shares was cancelled and in lieu thereof Certificate No. 9 was issued dated November 25, 1935 for 109 shares, and No. 10 in the name of Dr. H. H. Meyers for 120 shares and No. 11 in the name of Dr. H. H. Meyers for 305 shares, making a total of 534 shares from Certificate No. 5.

In the spring of 1936 the capital stock of the Development Company was increased from 640 shares to 1,500,000 shares and a provision made for the exchange of stock for leases on the basis of eight shares of stock per one leasehold acre.

The Peoples Gas and Oil Company on or about October 20, 1936 received 240,000 shares of stock from the Development Company and in August, 1937 an additional 30,000 shares, making the oil company owner of 270,000 shares in the Development Company.

The 240,000 shares were first issued to the Oil Company for the unpaid balances on lease contracts in the amount of \$535,000 turned over to the Development Company. The consideration for the additional 30,000 shares was the cancelled acreage previously held by the oil company and turned over to the Development Company.

In turning over the accounts receivable on the contracts for \$535,000 the Development Company

(Testimony of W. S. Rich.)

assumed an obligation for commissions to salesmen of approximately \$114,000.

I have prepared a summary of checks issued by the Peoples Gas and Oil Company admitted in evidence, which bear the endorsement or purported endorsement of Louis Roth. The summary is based on Exhibits 157, 122, 123, 124, 158, 165 and 164.

[452]

The total amount of these checks of the Peoples Gas and Oil Company, bearing the endorsement, or purported endorsement of Mr. Roth, is \$163,914.94. Of these checks the following amounts were made payable originally to the names shown as follows:

Louis Roth	\$ 96,781.88
Dr. B. Blank	10,801.88
M. M. Black	55,371.18
L. W. Inzig	960.00

\$163,914.94

Between July 11, 1935 and April 23, 1936 Louis Roth drew in currency \$65,915.94. On personal checks cashed by him against his commercial account in the Union Bank and Trust Company at Los Angeles, as shown by Government's 227 and other exhibits in evidence.

Q. Do you have the total amount of the checks issued by the Peoples Gas & Oil Company plus the personal checks of Lewis Roth, which were so cashed?

A. Yes, sir.

Q. What is that?

A. That amounts—

(Testimony of W. S. Rich.)

Mr. Simon: I object to that as irrelevant and immaterial.

The Court: I don't know that I quite understand the question.

Mr. Hile: These are the checks issued by the Peoples Gas & Oil Company plus the personal checks of Lewis Roth, which were cashed, your Honor, according to the evidence, and the stipulation of counsel, for which cash was received, for the total amount. In other words, he has testified as to personal checks of——

The Court: But on your theory, now, wouldn't there be a duplication there?

Mr. Hile: No. This is the totaling of the two [453] amounts.

The Court: I know. But if I understand your preceding questions, they were with reference to checks of the Peoples Gas & Oil Company. Aren't these the same checks?

Mr. Hile: No.

The Court: Not the same checks, necessarily, but drawing money from his bank account and checking it out.

Mr. Hile: No, this is the total of all the checks issued by the Peoples Gas & Oil Company, which were cashed, plus the personal checks of Lewis Roth, which the evidence shows have been cashed. In other words, showing the total amount of cash as per stipulation and evidence from tellers and otherwise.

(Testimony of W. S. Rich.)

The Court: It appears to the Court that Roth's checks that were cashed as you refer to, were not necessarily checks that came out of the Peoples Oil & Gas Company.

Mr. Hile: Well, that is true, but these are checks upon which we have shown cash, that is cash received by Roth, in connection with our theory that Lewis Roth was a conduit for Dr. Meyers.

The Court: It seems to me your question should segregate those two items rather than——

Mr. Hile: Well, may I put it this way?

Q. (By Mr. Hile): Will you now give us the total amount of the personal checks of Lewis Roth, based upon the stipulation and the evidence, which is shown to be cashed, as to which you have already testified, and being, I believe, \$65,915.94. Is that correct? A. That is correct; yes, sir.

Q. And the total amount of the checks of the Peoples Gas & Oil Company, which were issued by the Peoples Gas & Oil Company and which the evidence and/or stipulations show were [454] cashed by J. F. Simons, William Markowitz, Lewis Roth and Dr. H. H. Meyers? A. \$151,216.00.

Q. Now, what is the total of those two figures of which you have testified? That is the checks, that is the checks cashed by Roth, personal checks, and the checks of the Peoples Gas & Oil Company which were cashed?

Mr. Simon: Now, if the Court please, that is precisely the question to which I objected a moment ago. I think it is immaterial and incompetent, and

(Testimony of W. S. Rich.)

I think, further, that it is irrelevant and improper for the reason that, admittedly, the defendant Lewis Roth was a defendant in this case, was acquitted by the verdict of the jury, and it is, I think established, therefor, that he was not a "conduit" as counsel has contended. But, in any event, and further, it seems to me that the evidence in any event is irrelevant and immaterial, because nobody, so far as I can see, could be defrauded; no leaseholder could be defrauded by the transaction. The basis of this is this, your Honor: If these people were told that no portion of their money that they paid for their leases was to belong to anybody other than the Peoples Gas & Oil Company——

The Court: I do not care for an extended argument.

Mr. Simon: If my position is clear, I won't press the point.

The Court: The question now calls for a mere matter of mathematical calculation, adding the two figures together.

Mr. Hile: That is correct.

The Court: Making two hundred seventeen thousand and something.

Mr. Hile: That is correct. [455]

The Court: But the objection goes to the previous question, and to the objection already made.

Mr. Simon: No, I haven't any objection except the objection that I have heretofore voiced, that it is immaterial how many of his personal checks Lewis Roth cashed during the period, and I have no

(Testimony of W. S. Rich.)

additional objections over the ones that I interposed at the time of the introduction of the evidence as to how many checks Mr. Simons and Mr. Markowitz cashed. But the checks that counsel has inquired about, as I understand it, the \$65,000.00, are not checks of the Peoples Gas & Oil Company, but his own checks on his own account that he cashed for reasons not known to ourselves and not known to counsel. Now, he is attempting to add to that the checks of the Peoples Gas & Oil Company, which were cashed by Markowitz and Simons and Meyers on the one hand and the personal checks in an entirely different account of Mr. Roth; and it seems to me when you get through you get a figure, but it is necessarily meaningless. It is like adding——

The Court: Well, that would be a question of fact for the jury to decide, Mr. Simon, based upon the theory of the Government, whether they have established their contention. The objection will be overruled.

Mr. Simon: Exception.

The Court: Allowed.

Q. (By Mr. Hile): What is the figure, the total of those two figures?

A. About \$217,131.94.

From July 31, 1935 to October 15, 1936, which was the date the Development Company took over really Meyers, according to the books and records advanced to the Peoples Gas & Oil Development Company and the Peoples Drillers for [456] drill-

(Testimony of W. S. Rich.)

ing operations, the sum of \$196,000.00. That during the same period of July 11, 1935 to October 15, 1936, aside from the note transaction, there were total deposits of \$192,555 made in the checking account of the defendant.

Cross Examination

By Mr. Simon:

I testified that after the increase of the capitalization of the Development Company the Oil Company owned first 240,000 shares of the Development Company and that later was increased to 270,000 shares. My recollection on direct examination was that the 240,000 shares were given the Oil Company in consideration of \$535,000.00 in accounts receivable turned over to the Oil Company, but I was in error in that statement, and after my recollection has been refreshed the facts are that when the sale of leases ceased there was left approximately 30,000 acres unsold and when this was turned over to the Development Company the Oil Company received the 240,000 shares and there was a block of forfeited contracts which resulted in sufficient acreage for an additional 30,000 shares of the Development Company. The assignment of the accounts receivable did not occur until October 1938.

I testified that defendant Meyers received from these companies together \$8,288.19. This was reimbursement for expenses that he had incurred, called "Executive Expense". I think some of it was for travel to California, and some for hotel bills at the

(Testimony of W. S. Rich.)

Olympic Hotel. I believe there was included a trip to Washington.

The books do not show that defendant, Meyers, ever received any money for salary or compensation for services. [457]

I testified that the total of the checks paid to Louis Roth on his endorsement including these originally payable to others was about \$163,000. These were not all dividend checks. A couple of them represented the repayment of notes involving the initial capital. I think they total about \$18,000 with interest. About \$150,000 of the amounts was from dividend checks of the Peoples Gas & Oil Company, in the correct amounts, according to the dividends declared.

Some of the checks were payable to Mr. Roth as the holder of stock in the company, some of them went to Dr. Blank, M. M. Black and Dr. Einzig. I do not know what the transactions were between Mr. Roth and these other gentlemen by reason of which he cashed their checks. [458]

A. J. ZIMMERMAN,

A witness called on behalf of the plaintiff, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a Special Agent of the Federal Bureau of Investigation, Department of Justice since March

(Testimony of A. J. Zimmerman.)

19, 1934. My duties are principally accounting investigation. I received training at the Southern Illinois University and Walton School of Commerce in Chicago. I did not receive a degree. I went to Chicago and was engaged as instructor in accounting until February, 1934 and following that I went into the Federal Bureau of Investigation. I am now engaged in accounting work. I have made examination of the books and records of the Peoples Gas and Oil Corporation. On April 28, 1934 stock of that company was issued to the following:

Sam Markowitz	120 shares
William Markowitz	120 shares
B. Blank	60 shares
J. F. Simons	340 shares

640 shares

The records show that the corporation acquired the leases directly from William A. Broome and his wife in April, 1934. The records show that the Peoples Gas and Oil Company sold the leases. The corporation handled no cash and had no bank account during its existence from April, 1934 to March 31, 1935. The corporation received its income on a percentage of the collections made by the oil company from the sale of leases to the public. The corporation received a total of \$28,748.44. That is merely a transfer by journal entries between the two corporations. [459]

On March 31, 1935 there was a merger of the two companies. On April 1, 1935 the oil company

(Testimony of A. J. Zimmerman.)

took over from the corporation leases valued at \$60,108.82 and incorporation expense of \$46.85, making a total of \$60,155.67. The Peoples Gas & Oil Company assumed the following liabilities from the Peoples Gas & Oil Corporation:

Notes Payable\$27,756.62

Inter-company obligation to

Peoples Gas & Oil Company of 11,449.49

Accrued Interest of 2,956.17

Accrued Taxes Payable 217.69

Accrued Salaries Payable 1,000.00

Making a total of\$43,389.87

The difference between that and the total assets amounted to \$16,765.18. That was composed of the capital stock of \$640, having surplus account at that time of \$16,125.80. The capital stock of the oil company amounted to 640 shares in April, 1934 of the nominal value of \$1 per share.

On June 29, 1935 the records show the stock, after the consolidation was held by the following:

William Markowitz640 shares

J. F. Simons640 shares

1280 shares

In the merger the stock of the corporation was retained by the company making the number of shares 1280 shares.

There were changes in ownership and on July 30, 1935 the stock was held by the following:

(Testimony of A. J. Zimmerman.)

M. M. Black	243.2 shares
B. Blank	89.6 shares
Lewis W. Inzig	32. shares
William Markowitz	300. shares
Louis Roth	89.6 shares
W. Sturley	12.8 shares
J. F. Simons	512.8 shares

Further changes were made and on August 6, 1935 the records show the stock held by the following: [460]

M. M. Black	326.4 shares
B. Blank	89.6 shares
Lewis W. Inzig	32. shares
William Markowitz	229.6 shares
Louis Roth	89.6 shares
J. F. Simons	512.8 shares

Making a total of1280. shares

On September 5, 1935 the stock holdings are shown as follows:

M. M. Black	265.6 shares
B. Blank	89.6 shares
Lewis W. Inzig	32. shares
William Markowitz	290.4 shares
Louis Roth	89.6 shares
J. F. Simons	512.8 shares

On November 25, 1935 the record is as follows:

M. M. Black	275.6 shares
B. Blank	89.6 shares
Lewis W. Inzig	32. shares

(Testimony of W. S. Rich.)

January 18, 1936	\$ 2,000.00
March 3, 1936	5,000.00
March 10, 1936	5,000.00
June 5, 1936	10,000.00
	<hr/>
	\$22,000.00

The Development Company repaid \$12,000 of the \$22,000 loans on March 25, 1936 and the Peoples Drillers repaid the balance during June, 1936, having assumed that obligation from the Development Company in connection with the transfer of the drilling operations.

On June 10, to October 15, 1936, according to the records, the Peoples Drillers paid for the drilling. The authorized capital stock of that company was \$50,000 shares of \$1 par, 640 shares were issued. All accounts on the books of the Development Company were transferred to the Peoples Drillers. [444]

The cash receipts of the Drillers from June 10, to October 31, 1936 were as follows:

From Peoples Gas & Oil Development Company	\$ 4,725.00
From Dr. H. H. Meyers	68,500.00
From the Peoples Gas & Oil Co.	4,000.00
Refund from Great Northern Railroad Company	8,103.75
Miscellaneous	778.66
	<hr/>
	\$86,107.41

(Testimony of A. J. Zimmerman.)

1936 they cancelled or wrote off contracts in the amount of \$553,455.34, leaving a net sale of \$2,312,357.10. During the period of April 16, 1934 to October 15, 1936, when the accounts receivable were transferred to the Development Company the Peoples Gas and Oil Company collected in cash \$1,690,527.51.

They gave leases as bonuses in the sum of \$34,606.00.

They accepted securities in payment of leases in the sum of \$8,754.00. Salesmen's commissions were applied in payment of leases amounting to \$41,966.94, making a total of \$1,777,022.45, which when deducted from the net sales of \$2,312,357.10, leaves a balance of the Accounts or Contracts Receivable as of October 15, 1936 amounting to \$535,324.65. Unpaid contracts were transferred to the Development Company on October 16, 1936.

During the period from October 16, 1936 to October 22, 1937, the date of the receivership, the books show a total cash of \$171,494.52 collected. Trade contracts for merchandise and services were accepted in the sum of \$3,091.28. There were journal adjustments of \$2,611.14, making a total of \$171,196.94, which deducted from the \$535,334.65 produced a gross balance of Contracts Receivable on October 22, 1937 of \$358,137.71.

During this period they wrote off as uncollectible a total of \$92,834.89, leaving an uncollected balance of Contracts Receivable on October 22, 1937 of \$265,302.82.

(Testimony of A. J. Zimmerman.)

During the period April 17, 1934 to October 22, 1927 the total amount collected on leases was \$1,-859,197.84. In addition there were collected recording and execution fees during that period amounting to \$45,338.44, which gives a total of \$1,904,536.28 collected. In addition securities [462] were accepted in payment of leases on merchandise and services received for leases in the sum of \$38,865.28, making a total consideration received of \$1,943,401.56.

From April, 1934 to March 31, 1935 the company collected on lease sales approximately \$178,-956.46. Up to and including June 3, 1935, the amount had reached \$321,380.74. On May 31, 1936, when the drillers took over, the collections had reached \$1,395,859.55. On August 31, 1936 the amount was \$1,615,618.69 in cash and on October 15, 1936 \$1,687,703.32 net collected in cash.

The Peoples Gas and Oil Company paid \$480,-000.00 in dividends, from August 12, 1935 to September 24, 1936, as reflected by the books of the company. None of the other companies paid any dividend. These dividends were paid as follows:

M. M. Black	\$ 49,754.00
B. Blank	33,600.00
L. Inzig	12,000.00
Louis Roth	88,720.00
William Markowitz	107,076.00
J. F. Simons	188,850.00

\$480,000.00

(Testimony of W. S. Rich.)

The items making up the total cost of the drilling operations are the following: [446]

A. Land, \$1,510.35; Buildings, \$8,338.13; Equipment, \$119,173.55; Autos and Trucks, \$3,930.76; Repairs and Supplies, \$50,775.03; Fuel Oil, \$22,933.43; Coal, \$2,006.20; Gas & Oil, \$9,730.60; Hauling, \$3,939.13; Labor, \$107,746.44; Executive Salary, \$23,100.00; Executive Expenses, \$11,434.62; Engineering and Geological Expenses, \$10,783.13; Office Rent, \$6,640.00; Office Salaries, \$25,598.75; Printing, etc., \$9,736.55; Postage, \$4,401.95; Taxes, \$6,544.10; Insurance, \$8,033.40; Expense, \$10,692.24; Recording, 127.15; Directors' Fees, \$917.50; Drilling Contract, \$802.83; Interest, \$5483; Commission Expense, a credit item, \$81.72; Total, \$448,869.13.

On October 22, 1937, the date of the receivership, the development company had, according to its books, cash on hand of \$2,764.50.

From the records, W. A. Broome is shown to have received:

From the Peoples Gas & Oil Company for salary and ex- penses	\$14,239.18
From Peoples Drillers, as salary and expenses	2,793.80
From the Development Com- pany as salary and expenses..	17,344.76
	<hr/>
	\$34,377.74

Of the \$14,239.18 paid by the Oil Company to Broome, \$8,152.59 was credited on the \$65,000 note.

(Testimony of A. J. Zimmerman.)

There was \$65,000 given as consideration. A promissory note was set up for the leases and given to the Development Company. There must be some step that is not shown by the record. Whether that is inconsistent or not I do not know. I think the figure as to the cost of drilling and expenses necessary in connection with the drilling was approximately \$448,000, including equipment, buildings and land, as well as actual expenses of drilling.

As I recall it, the total advanced to the companies by defendant Meyers approximated \$196,000. That is exclusive of the \$65,000 which the records show was due him for leases.

According to the books and records the total amount received by Dr. Meyers from all three companies was \$8,288.19. According to the records he was never paid any compensation or salary and never received any dividends. Generally speaking the books, as far as the mechanical accuracy is concerned on their face were carefully kept.

I was present at the meeting with Dr. Meyers in his hotel room and Mr. Swenson, Mr. Rich. I do not recall that he objected to answering any questions except as to the depth of the well, and when we asked to examine the books and records the officials gave us full access. [464]

I would not know the amount paid in taxes by the Peoples Gas and Oil Company and the stock holders to whom dividends were paid. The stock holders of record in the Peoples Gas and Oil Company were actual people.

(Testimony of A. J. Zimmerman.)

Re-direct Examination

By Mr. Hile:

In addition to the \$480,000 in dividends there were commissions paid to William Markowitz. \$184,000 going to him included commissions. According to the records there as an over-riding commission account of William Markowitz of \$312,234.87. According to the records his accrued salary showed \$22,499.41. J. F. Simons received \$36,000 as executive salary, according to the records of the Oil Company and \$14,395.05 for traveling and entertainment expenses.

At the time of the interview with Mr. Meyers by Swenson and Rich and myself, as I recall it, he was asked the question as to his financial worth and he did not answer directly. He said if he had the difference between what he was reputed to be worth and what he was actually worth it would be a considerable sum. I never found any voucher relative to the \$65,000 note to show what was actually expended as backing up this \$65,000 entry.

I was never able to find the original notes for \$20,000. I asked for those notes and vouchers.

Recross Examination

By Mr. Simon:

I think it is correct that the net amount of commissions that William Markowitz received was \$12,000. Although I mentioned a gross figure of three hundred odd thousand dollars, the records are not exactly clear. [465] The commission ac-

(Testimony of A. J. Zimmerman.)

count of Mr. Markowitz was charged with considerable sums which were later transferred into Notes Receivable to J. F. Simon. For that reason a claim of \$250,000 was set up at the time the note was set up on the books and then later the money came back in payment of that note. In effect it was borrowing by somebody of \$250,000. [466]

MOTIONS MADE AT THE CLOSE OF GOVERNMENT'S CASE

Mr. Simon: May it please the Court, at this time, the Government having rested, the Defendant, H. H. Meyers, moves for a dismissal of Count 1. of the Indictment for the reason and upon the ground that there is not sufficient competent evidence from which the jury could properly return—upon the basis of which the jury could properly return a verdict of “Guilty” upon the said Count, and that for the said insufficiency of the evidence the said Count should be dismissed.

The Court: The motion will be denied and exception allowed.

Mr. Simon: The same motion, may it please the Court, with reference to Count II of the Indictment.

The Court: The same ruling.

Mr. Simon: Exception. The same motion with reference to Count III of the Indictment.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Count IV of the Indictment.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Count V of the Indictment.

The Court: Likewise the same ruling.

Mr. Simon: The same motion with reference to Count VI of the Indictment.

The Court: Yes, I assume you desire to make the same motion as to all the other Counts of the Indictment?

Mr. Simon: Yes, your Honor. May it be understood that I am making—may it be understood that I have made [467] separate motions as to each of the thirteen counts of the indictment, like the one made as to Count I?

Mr. Hile: No objection.

The Court: And the Court makes the same ruling with this exception: I have endeavored to follow closely the evidence as to the case as it has progressed and I have made rather extensive notes and my notes indicate that there was some proof on the mailing on each of these various letters. Now, if I am in error on that, I would like to have my attention called to it; and likewise proof on each of the eight overt acts, as to Count XIII, the conspiracy count.

Mr. Simon: On the letter point, your Honor, I concede that there has been a *prima facie* show-

ing as to at least one of the overt acts and I think that is sufficient.

As to the others, my point as far as the mailing has been concerned is that the mere testimony of the receipts through the mails was from the mails by the witnesses of the documents in question is not sufficient evidence of the mailing or the carriage in the mails of the instruments in question; and that is the basis and the only basis upon which I raised that point. I concede, your Honor, that to each of these counts——

The Court: And as to each of the overt acts likewise?

Mr. Simon: No, I couldn't say that; but as I view it as far as the overt acts are concerned, proof of one overt act would be sufficient, and I concede that there has been a *prima facie* showing of at least one overt act, but I don't recall which one.

The Court: If there are any on which there has not been proof, the Court would like to be advised of that now, because in instructing the jury I would withdraw that from them. [468]

Mr. Simon: I think there are several overt acts on which the Government has not sustained the burden of proof.

Mr. Hile: Some I think we mentioned we would not attempt to prove, your Honor. That would be six and seven, the public meeting at Eagles Hall, the public participations, and the security and petroleum royalties corporation.

The Court: I have six noted as "no proof offered".

Mr. Hile: And as I understand it also from the Indictment have been withdrawn or will be withdrawn that portion thereof relating to securities petroleum and the parts I mentioned to your Honor when we first—we will withdraw the parts with relation to that. Now, that is not at our request, but I understand the Court is doing so.

The Court: Yes. Of the overt acts, six and seven, the Government made no showing whatever in reference to those.

Mr. Hile: As to six and seven,—well, there was some evidence I think on seven.

The Court: There was evidence of a meeting of certain managers in Seattle.

Mr. Hile: That was gone into, but six, there was no proof as to that. Well, now, there was some.

Mr. Johnson: There was nothing on seven.

Mr. Hile: Through Christensen, that they called the salesmanagers together and explained about the participation. It is not mentioned in the overt acts.

The Court: Unless the Government can make some showing as to why the Court should not withdraw from the consideration of the jury overt acts Nos. six and seven, I shall be inclined to withdraw them.

Mr. Hile: Oh, seven does include the security and petroleum. That is right, your Honor, there was no evidence introduced on that and we have no objection to withdrawing overt act six. [469]

The Court: Both Six and Seven?

Mr. Hile: Six and Seven.

The Court: Now, in the previous trial, one of the overt acts involving the mailing of a letter was withdrawn because of no proof of it in that case.

Mr. Hile: That is Dellis as I recall it.

The Court: Yes.

Mr. Hile: No. 3, is that the number?

The Court: Yes.

Mr. Hile: Yes, we did put——

The Court: My notes indicate that there was something on that.

Mr. Hile: There was. Mr. Dellis took the stand.

The Court: Very well.

Mr. Simon: If the Court please, as this time without waiving the foregoing motion, Defendant Meyers moves that the allegations of the numbered paragraph, Paragraph No. 1 on Page Four of the Indictment, as to the misleading and false pretensions representations and promises be withdrawn from the consideration of the jury for the reason and upon the ground that there is no sufficient competent evidence to warrant the submission of any issue on that point to the jury.

The Court: The motion will be denied and exception allowed.

Mr. Simon: That there be withdrawn from the consideration of the jury the allegations of Paragraph Three of the outline of the scheme or artifice which is set forth on Page Six of the Indictment, having to do with the connection of the Defendant Meyers with the engineering firm of Joseph B. Strauss, for the same reason and upon the same ground. [470]

The Court: The same ruling and exception allowed.

Mr. Simon: That, similarly, be withdrawn from the consideration of the jury, the allegations of Paragraph Four of the said outline of misrepresentations upon the same ground, namely, that there is no sufficient competent evidence to warrant the submission of the issues found therein to the jury.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Paragraph Five, your Honor, on the same ground.

The Court: The same ruling and exception allowed.

Mr. Simon: With reference to Paragraph Six, the same motion. There I think admittedly there has been no evidence in support of Paragraph Six; and I also call the Court's attention to the fact that Mr. Broome was a defendant upon the last trial and was acquitted, so that this allegation as to his representations of his experience would, I think, necessarily have been adjudged for the purpose of this trial to have been true.

The Court: I think I shall have to deny your motion for the same reason.

Mr. Simon: Exception.

The Court: Allowed.

Mr. Simon: The same motion with reference to Paragraph Seven on Page Nine of the Indictment, your Honor.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to Paragraph Nine of the Indictment, on Page Nine, that where it is said, that "defendant also owned or held a promising land in the Rattlesnake Hills District joining to a commercial-producing gas field". The proof shows that at least the defendant Broome actually did have—did hold these leases; [471] and I think that as a consequence there isn't any proper basis for the submission of any issue under Paragraph Nine.

The Court: What have you to say about that, Mr. Hile?

Mr. Hile: First, I want to say that in the Broadside it was represented it was a holding of the Peoples Gas & Oil Corporation, your Honor. I am referring now to Plaintiff's Exhibit 21, and to the map on there showing Frenchman Hills and also the Rattlesnake Hills District, and under the explanation it shows "holdings of the Peoples Gas & Oil Corporation of Washington".

Now, there was no holding under the escrow, and the escrow never passed to anyone any title. In other words, it was just a transaction which was never consummated and never held by anyone, except the escrow holder, which was never released, held by Mr. Broome. If there was any holding, if you can call it a holding in the legal sense, which it is not, it was in the nature of an option on them and not shown to be held on behalf of any of the corporations.

Mr. Simon: The charge in the indictment is not,

your Honor, that they falsely represented that the company held it. The charge is that the defendant——

Mr. Hile: “The said defendant”.

Mr. Simon: Yes, “the said defendant”. And the answer is that the company as such, which is not a defendant in this case, and the Government proof shows that the defendant Broome held, I submit, this land in Rattlesnake Hills negatives any charge of falsity in that representation.

Mr. Hile: The corporations are only instrumentalities; and where it says “the defendant” it refers to their instrumentalities also; and the defendant Broome never purported to hold these. [472]

Mr. Simon: Well, the charge in the Indictment is——

The Court: I will pass my ruling on Nine. I want to check my own notes on that. Now, is that all? [473]

DWIGHT C. ROBERTS,

recalled on behalf of the defendant, having been previously sworn, testified as follows:

Direct Examination

By Mr. Simon:

I reside at Houston, Texas. I am assistant general manager for the Sperry-Sun Well Surveying Company. I am a petroleum engineer and geologist. I am a graduate of Stanford University Mining School, with a degree of A.B. in what they call Pre-Mining Curriculum. I was three years with the

(Testimony of Dwight C. Roberts.)

Division of Oil and Gas in California and was geologist and petroleum engineer for the Graham & Loftis Oil Corporation for one and half years. I was chief engineer on the Curtailment for the Oil Empire of California for about three years and before going to college I worked in oil refining and the oil fields during my vacation. I was geologist and engineer for E. A. Parkford of Los Angeles in charge of some drilling and geological work in North Texas.

I made a brief reconnaissance of the Frenchman Hills area in 1928. I passed through there and spent two or three days and then later wrote this report based upon some of my personal observations, but mainly upon the published geological reports of the United States Geological Survey and private reports.

Exhibit A-130 is a report that I made at the request of John B. Case, at that time the Chief Deputy Supervisor of the State Mining Bureau of California. The purpose, as I stated yesterday, was to try to interest capital in going in there. First putting up money to make a more thorough study of the geology and possibly leading [474] to the development of the geologic structures.

Exhibit 130 admitted.

As I recall it, I first met William A. Broome about December, 1932 or January, 1933. After I had made this report I visited the area about April or May, 1933 at the request of McKim Hollins. He

(Testimony of Dwight C. Roberts.)

was also known as Kim Hollins. To the best of my recollection he was more or less a promoter. It was my understanding that he had something to do with getting the Mulheim people interested in drilling the Kettleman Hills and he was apparently acquainted with John P. Mills, who was connected with that company.

I was with Broome when he called on some of the large companies in Los Angeles and some private individuals, in efforts to get this structure test drilled. I know he called on Mr. Bryant in charge of the Standard Oil Company of California and on the Shell people, but with whom he talked I do not know. I was with him when he talked with Col. Spicer connected with the Republic Petroleum Company, who was interested in going up and looking over the property, but it seems that Mr. Broome wanted some cash down before the trip was made and Mr. Spicer said "No" and that was the end of that. Several peculiar occurrences of that kind took place that are rather hard to explain.

On the basis of the investigation I made on Frenchman Hills it was my opinion that it was worthy of a test by drill. I believed in what I stated in defendant's A-130.

Cross Examination

By Mr. Hile:

I do not know in fact that McKim Hollins was [475] interested in getting the Muelheim Company to drill. That is hearsay.

(Testimony of Dwight C. Roberts.)

At the time Broome called on the larger companies a curtailment of oil production was in effect, as I recall it, and he wanted certain money. That is what killed one proposition, I know. Whenever he would try to deal with people he would want some cash to pay his expenses. Geo-physical work to determine the thickness of the basalt on Frenchman Hills would have been rather expensive. The parties usually charge around \$10,000 a month. It would depend on the length of time it would have taken them. That method was never employed on Frenchman Hills to my knowledge.

Before making my report I spent two or three days in that area. That was the only time I had been there. I got some private reports that Mr. Broome had and some geological reports.

My statement in the report that the Rattlesnake Hills gas is a petroleum gas was based on an analysis presumably made of that gas. I was not present when the gas was taken from the well. The report was made by the University of Kansas. I do not know who made the analysis or under what conditions the samples were taken. I was inclined to believe the report of a reputable laboratory. I thought probably the source bases present at Rattlesnake Hills would underly the whole area. I predicated my report on the assumption that there was petroleum gas in the neighborhood and my statement "Seeps of petroleum exists at Cable Hills, Priest Rapids and Wenatchee" was from one of the reports made available by Mr. Broome. I did

(Testimony of Dwight C. Roberts.)

not see any seeps while up there. I saw certain colors along the Columbia that could well have been formed by seeps of that nature. I certainly [476] did not intend that my report should be used to interest the public to invest its funds in order to secure necessary capital or to finance the project. My report was made to attract capital. I think the area was worthy of a test by drill. Where the money came from or how it was obtained is probably beside the point.

Dr. Meyers never came to me to discuss my report nor did he telephone me.

I intended to make a more thorough and detailed study of the structure in the event any capital was interested. I think that it is mentioned on the first page of the report. The area is completely covered with basalt and I could spend a month out there on top of that basalt. I could not even make a start in the short time I was there, as I said. My report was in reference to the general area, not specifically Frenchman Hills.

When I went back I did not go with Mr. Broome, but with myself and wife, I should say. I did not find anything in addition to what I had previously seen. If there had been available a report from a reliable source showing that the Rattlesnake Hills gas was not a petroleum gas it certainly would have influenced my report.

I was to have a ten percent interest in the development. I never received it. I severed my connection with Broome as soon as he started going to

(Testimony of Dwight C. Roberts.)

the public selling leases. That is the main reason I severed my connection.

Redirect Examination

By Mr. Simon:

From what I have learned about the drilling through that basalt I believe I certainly would change my opinion because the basalt on the Frenchman Hills is not a porous basalt, as on the Rattlesnake Hills. I cannot say now that [477] I would still consider the structure worthy of a test by drill having the information that was available at the time I made the report. Naturally I would be influenced considerably by the knowledge of the difficult drilling. Of course, methane gas is not nearly as attractive to a driller as ethane. Methane is not a petroleum gas. I do not think I would have recommended drilling if I had known there was just a methane gas. Also I know that the basalt is considerably thicker than estimated before and naturally that changes the picture when it comes to drilling. I thought then the basalt might be around 4500 feet.

The statement in my report that the gas in the old water well in Grant County "could be lighted today and burn with a typical red and yellow flame of a petroleum gas", was information given me by Mr. Broome and corroborated by other men I talked to in Ephrata. I did not go there myself. I believed in the statements Broome made. In short, I was recommending the structure for a test by drill

(Testimony of Dwight C. Roberts.)

on the basis of information furnished me and recommending it to people who were in the petroleum industry and knew what was involved. When a preliminary report like that is rendered it is understood among the profession and industry that all of these are subject to confirmation, of course.

Recross Examination

By Mr. Hile:

I submitted this report on information I had as warranting further exploration work. Any company would put its own geologist on to do further exploratory work. I would not recommend drilling a hole without that type of work. [478]

MARCUS B. PRITECA,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I live at Seattle and have resided there since 1909. I am an architect and have been engaged in that profession since 1911. I met defendant Meyers first at San Francisco about 1925 or 1926, to the best of my recollection. He was breakfasting with Mr. Strauss, the bridge engineer at the Palace Hotel in San Francisco.

In the fall of 1937 Dr. Meyers consulted me with reference to a proposed development at Soap Lake

(Testimony of Marcus B. Priteca.)

for a medical center, hotel system. He had an option on some property and I made a plat of that. The return of the indictment in this case cancelled it.

The reputation of defendant Meyers in the City of San Francisco as being a law abiding citizen and for truth and veracity prior to 1930 was good.

Cross Examination

By Mr. Hile:

I did not live at San Francisco then. My headquarters have always been in Seattle, but my practice has taken me down there, and it happened that one of my clients, on an air trip, asked me if I knew Dr. Meyers and he was the one who told me of Dr. Meyers' responsibility and general good reputation and suggested I do some business with him. That was the source of my information as to general reputation. [479]

S. A. PERKINS,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

My name is S. A. Perkins. I reside at Tacoma and have lived here 34 years. I am operating four daily newspapers. I am chairman of the Board of the Alaska Transportation Company and President of the Standard Gypsum Company of San Fran-

(Testimony of S. A. Perkins.)

cisco. I was at one time private secretary to Mark Hanna.

I have known the defendant Meyers for better than twenty-five years. I first met him in New York. I have seen him often in San Francisco. I have seen him in Los Angeles and Washington. I have discussed the Cascade Tunnel with him frequently because I was appointed on that Board by the Governor. The other members of the Board were John P. Hartman and Clarence D. Martin. I first discussed the Cascade Tunnel with Meyers in the year 1927.

Q. Mr. Perkins, during what period did you know him in New York, know Mr. Meyers in New York?

A. Well, I think I first met him in New York about 20 years ago, a little over, if I remember correctly; it was our first meeting.

Q. And have you seen him there in New York and heard of him in New York for the past twenty years? A. Oh, yes.

Q. While you were in New York during these twenty years, Mr. Perkins, did you know the general reputation of Mr. Meyers in the City of New York for being a law-abiding citizen?

A. I think I——

Q. What was it? Good or bad? [480]

A. Good.

Q. Did you know his general reputation during that period in the City of New York for truth and veracity?

(Testimony of S. A. Perkins.)

A. I would say that all I know it was good.

Q. (By Mr. Johnson): Do you know his general reputation? A. Yes, I do.

Mr. Hile: In the City of New York?

A. Yes, sir; I do.

Q. (By Mr. Johnson): What was it? Good or bad? A. Good.

Q. I will also ask you if you know his general reputation during the time that you have known him in the City of Los Angeles and the City of San Francisco? A. Good.

Q. For being a law-abiding citizen? Is it good or bad? A. Good.

Cross Examination

By Mr. Hile:

I did not know of defendant Meyers' connection with the American Lux Products Company or the Translux Product Company. I knew him in 1918 and 1919. He never discussed that project with me.

I do not know anything about his activities in this case, the Peoples Gas and Oil Company.

I was given to understand that Meyers, while in New York, had the financing of the Cascade Tunnel lined up, providing the state came through with the original survey. I got that out of Mr. Strauss' office from Mr. Strauss himself. [481]

I spent and have spent for many years, several weeks each year in New York.

I was naturally interested in having the Cascade Tunnel financed by Eastern capital. They could

(Testimony of S. A. Perkins.)

not finance it here. I did not go any further than Mr. Strauss. I did discuss it with a lot of men. All the reports concerning the Strauss firm were good. Mr. Meyers in discussing the Cascade Tunnel proposed that the Strauss Engineering Company should do the engineering work on it. That was his connection with it as far as I knew and as far as I was concerned. [482]

EDGAR SNIDER,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Simon:

I live at Seattle. I am a member of the Bar. I have been in Seattle 45 years. For 12 years I was general counsel for the Seattle Port. For four years I was Special Assistant to the United States Attorney General, and have held other offices.

I was appointed counsel for the Port Commission in August, 1922. General Chittenden had been President of the Port Commission. He had written several articles on the proposed Cascade Tunnel, which appealed to me. Several years after that we formed the Cascade Tunnel Association. I met Dr. Meyers shortly after I became connected with the Board in 1922 or 1923 and I discussed the Chittenden report with him. He was not present at the

(Testimony of Edgar Snider.)

first meeting of the Association, but thereafter attended frequently. He participated in plans for the appointment of a committee of which S. A. Perkins was chairman, who, with John P. Hartman and Clarence D. Martin, made investigations and reported to the Legislature. That continued over a period of years.

About 1930 or 1931 Meyers told us of arrangements he had made with Mr. Strauss, who was becoming more interested in the Cascade Tunnel. I met Strauss twice. Once at the Palace Hotel in San Francisco and the second time in Los Angeles. Strauss told me he had such confidence in Meyers that he had become infected by the same enthusiasm of the Cascade Tunnel. He said he had planned to retire after [483] completing the Golden Gate Bridge, but on persuasion of Dr. Meyers he had become convinced his final mission in life should be completion of the Cascade Tunnel as the crowning glory of his career.

Strauss came to Seattle and attended a dinner given to about 150 members of the Tunnel Association and City officials by Meyers at the Washington Athletic Club. He made a speech and eulogizing Meyers, remarking that if it had not been for him the Golden Gate Bridge would never have become a reality. Meyers paid for the dinner. After we had difficulty in getting an appropriation from Legislature for a survey of the tunnel, Meyers said he would be willing to pay one-half of the expenses out of his own pocket.

(Testimony of Edgar Snider.)

I told Meyers of my association with Marcell R. Dailey who had made a report for Rufus Dawes, brother of Charles Dawes, former Vice-President on Eastern Washington oil prospects. Professor Weaver of the Washington State Geological Department had made a report deprecating the idea of oil in Eastern Washington. Dawes asked Dailey to make a special investigation and report. He did so during the course of several months and showed me his report, in which he told Mr. Dawes that he regretted to differ from Professor Weaver, but he was convinced that in point of fact Eastern Washington had really remarkable oil possibilities, and that he felt convinced that ultimately it would be found in commercial quantities, especially in the region known as the Rattlesnake Hills, which he had particularly examined, and he said that he found ample flows of gas there which he had tested and found to be true petroleum gas. I told all of that to Dr. Meyers, and he said as soon as he got through with the bridge situation, he would like to get into contact with Dr. Dailey, who unfortunately died while Dr. Meyers was in California. [484]

Cross Examination

By Mr. Hile:

I think I have a copy of the report and will try to furnish a copy. Dailey said the Rattlesnake gas was a petroleum gas. Meyers did not indicate that he was going to have it examined, but simply said he regarded that as one of the reasons for the Cascade Tunnel.

(Testimony of Edgar Snider.)

The cost of the proposed survey of the tunnel would have been about \$25,000.

When I first talked with Meyers he said he was interested in some bridge proposition. I did not know whether the Oakland Bridge or the Golden Gate Bridge was the one. He said they were having difficulties and opposition, particularly from the Southern Pacific Railroad. He said they were engaged in propaganda work to further the fight against the railroads, and he was taking part in that. He mentioned law suits and he said they were expensive and cost a lot of money. I do not know what he said as to who put up the money, but all this time he was discussing the general fight. Meyers did not bragg much about his wealth or the source of his income, or how he made a living, or from what source he proposed to pay one-half of the expenses of the tunnel survey. He appeared to be a rather modest business-like man, but he never boasted any.

The banquet for the tunnel association, I think, was about 1931. I do not think it could have been as late as 1933 or 1934. Meyers presented Strauss to the audience as a colleague and gave a glowing account of the engineering triumph of the Golden Gate Bridge. In his response Strauss said the bridge would not have been reality but for this man,—Meyers. [485]

WARD B. BLODGETT,

A witness recalled on behalf of Defendant, having been previously sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am a professional engineer and geologist, a graduate of Stanford University in 1916. I have been in the oil business since I graduated. I was assistant general manager and chief engineer and chief geologist of the Santa Fe Railway subsidiary oil company for seventeen years and then went into business for myself as consulting geologist since 1932. I have brought in three oil fields and I have drilled about 400 wells in California.

Defendant's Exhibit A-125 is a report I made to the Peoples Gas and Oil Development Company.

This reconnaissance trip was made about December 19, 1935 to check up on the drilling operations on Frenchman Hills. About a year later Broome hired me to come up as the well was in difficulty. Following that he asked me to serve on a retainer's fee which would call for a monthly trip to the well to see how the machinery was operating. That lasted until September, 1937.

Defendant's A-139 is a report I made to Broome on the second occasion, November 9, 1936. A-140 is the complete report made November 19, 1936. Both of said Exhibits admitted.

(Testimony of Ward B. Blodgett.)

DEFENDANT EXHIBIT A-140

(Copy)

Prospect 5228

Ward B. Blodgett

714 West Olympic Blvd. Room 342

Los Angeles, California

November 19, 1936.

Mr. W. A. Broome, President

Peoples Gas & Oil Development Co.

Fourth and Pike Building

Seattle, Washington

Dear Sir:

The following is a copy of wire to George Hogan regarding results of Alexander Anderson's oriented survey of Donnie Boy No. 1.

11/19/36

Mr. George Hogan, Superintendent

Peoples Gas & Oil Development Co.

Ephrata, Washington

Hole inclined at gradual angle no kinks

last reading twenty three degrees stop

Continue ahead with shot barrel hold up

weight as much as possible which will

help to decrease inclination Send

daily reports as often as possible

WARD B. BLODGET

I am enclosing herewith blue prints showing the plan of the course of the hole and two cross sections taken at different angles through the hole, together with all the detail data taken from each reading.

Pictures were taken approximately every forty

(Testimony of Ward B. Blodgett.)

feet and the results show that the inclination of the hole has increased gradually from the surface of the ground clear to bottom. The last reading shows inclination of $23^{\circ}20'$ direction N $50^{\circ}56'$ East. The bottom of the hole is 236' feet NE of the well location but is only 215.2 feet north of a line drawn through the surface trace of the hole and parallel with the axis of the Frenchman Hills anticline.

The measured depth of the hole surveyed is 1973.4 feet while the actual vertical depth is 1927.5 feet. In other words the inclination of the hole has resulted in a loss of only 45.9 feet in actual penetration of the beds. At the present depth the well is traveling 39.7 feet horizontally for every 100 feet of measured depth, and actual loss of vertical depth is approximately 8' per 100' of measured depth.

In view of the fact that the hole shows a very even gradual bending as clearly indicated on the cross section "A", I am glad to say that it is in good condition and perfectly safe for further drilling, if the tools are not injured or hung up with fractured material falling in from the "shot" zone which has been cemented off. Also in view of the fact that the well is only 215.2' north of the well location it is still on structure, and is safe to continue drilling ahead. If we should penetrate the basalt within another 1,000 feet we will still be on structure and if there is any oil or gas under this immense anticline this hole should be a producer.

Naturally a drift of $23^{\circ}20'$ from the vertical is

(Testimony of Ward B. Blodgett.)

not exactly desirable, but nevertheless when you consider that the hole has been drilled by a shot barrel, in other words, cored all the way this amount of inclination in this hard basalt is not bad. However I hope that by making changes in the shot barrel we may be able to decrease the angle of inclination. I will bring this matter up again later.

I would appreciate it if Mr. Hogan would run the Syfo Clinometer every day and keep an accurate record of each reading (depth and degree of inclination). Alexander Anderson is unable to furnish us with a single shot machine just at this time, but hopes to have one soon.

I am arranging to have a van dyke made of the original drawings showing the course of the hole so that I can have blue line prints made which can then be used to plot the course of the new hole as it is drilled. In this way we will all know where the hole is all the time.

I am sending a copy of this letter and drawings to Mr. Hogan.

I am leaving for San Francisco tonight on business and will be in the office again on Monday.

Very truly yours,

[Signed] WARD B. BLODGET

WBB:emb

Copy to:

Mr. George Hogan, Superintendent
Peoples Gas & Oil Development Co.
Ephrata, Washington

[Endorsed]: Filed Oct. 28, 1942.

(Testimony of Ward B. Blodgett.)

I believed what I said in the report or I would not have written it.

Q. What do you say now with reference to whether in your opinion this structure is worthy of test by drill?

A. It is not worthy of test by drill except by a large corporation with sufficient funds that knows exactly what they are doing, to go in there and attempt to go through [486] that basalt, people that would be willing to spend maybe a million and a half or two million dollars under the present systems of drilling, because that is just what it would cost.

Q. What is your guess as to the chance of finding oil or gas underneath the basalt?

A. Well, that is entirely a guess, naturally. My honest belief is that there are sedimentary beds under that basalt, and if there are sedimentary beds under that basalt there is a possibility of obtaining gas, and possibly in commercial quantities. But, as I say, and want to repeat, that is a guess. Nobody knows.

Q. Mr. Blodgett, in your opinion can anybody properly say with confidence that there is no gas or oil under this Frenchman Hills basalt?

A. Well, that is a matter of opinion and opinions differ among geologists the same as it does among lawyers; and you have to rely on the opinion of the people you are talking to. If they are positive in their opinion, that does not mean they are right, necessarily, either.

(Testimony of Ward B. Blodgett.)

I believe there was a serious, honest attempt to pierce the basalt in the drilling of Donnie Boy well.

I discussed my 1935 report with Dr. Meyers. I probably had conversation with him about the other. The exact date I could not give.

I examined reports proposing new drilling sites in connection with the sale of participations. A-143 is a report of Charles Henry's which I examined. A-142 is a report on the McGowan anticline. I think this was completed after my trip up here. I looked at it at Broome's request. A-141 is a report covering the Queets River Area. I checked that with John Holman—not the detail work. The report is not complete, but as well done as could be expected.

Exhibits A-141, A-142 and A-143 admitted in evidence.

Mr. Simon: The only purpose is to get the Government's testimony admitted over my objection regarding participations, [487] by the Board of Directors of the Development Company to a permit to sell participations on the ground that the proposed properties had not been sufficiently geologized.

Cross Examination

By Mr. Hile:

My statement in A-125, "Gas samples taken at Donnie Boy No. 1 at a shallow depth, which when tested by the University chemist proved to be ethane and octaine, which is proof that it had

(Testimony of Ward B. Blodgett.)

its origin in carboniferous formation" was information given me by Mr. Broome. The word octaine is a typographical error. It should not be there. Octane is not a gas.

As to my words; "All cores, or samples should be taken and carefully studied by competent paleontologists", whenever they found anything that was not basalt, which was very rare, they sent it down to me and I had it analyzed and discussed it with Hall Goudkoff, a very prominent paleontologist in Los Angeles. In all cases up to the time I stopped going up there all we found was volcanic ash between layers of crystalline rock.

In my conversation with Meyers about this report he told me he was financing it completely. I did not know of the lease selling at the time of my first report. I told Meyers that the well might cost up to \$500,000 or more. He said he was going to finish it no matter what the cost. "Therein was my faith that he would go through with the well". I told Meyers it was a gamble.

When I came up in response to Broome's request I came as a petroleum engineer. The well was already down [488] about 2000 feet. My duty was merely to see about the drilling.

The well was located on the structure about a quarter of a mile north of the axis.

I discussed with Broome and possibly with Meyers, a new pneumatic drill which had been invented down in Los Angeles and was performing remarkable feats. I wrote about it and after a

(Testimony of Ward B. Blodgett.)

month or so got a letter from Broome. I believe I wrote that the initial cost of the pneumatic drill would be tremendous. No such drill was ordered.

Exhibit 280 is a letter I wrote to Meyers on the subject. That refreshes my recollection as to my conversation with him. Government's 280 admitted.

PLAINTIFF'S EXHIBIT No. 280

Prospect 5228

Ward B. Blodgett

714 West Olympic Blvd., Room 342

Los Angeles, California

June 30, 1936:

Mr. H. H. Meyers

c/o Peoples Gas & Oil Co.

4th and Pike Building

Seattle, Washington

Dear Mr. Meyers:

On may 2nd I wrote you concerning a pneumatic Air Drilling Method for drilling in hard rock such as Basalt.

Is not my letter worthy of some sort of reply?

Very truly yours,

WARD B. BLODGETT

WBB:emb

[Endorsed]: Filed Oct. 28, 1942.

When I said yesterday I thought there was an honest effort made to pierce the basalt I was re-

(Testimony of Ward B. Blodgett.)

ferring to the drilling crew and the organization at the well. I do not know anything about the financing or selling or the honesty of the other operations.

I do not think anybody asked my opinion as to whether or not they should continue drilling based on the prospects of finding commercial oil or gas. But if they had asked me I would have said that so long as they had started and had already gone that far there was no reason in the world why they should not continue. It seemed to be the opinion of Broome and everybody that they were going ahead with the well.

As to the scientific value of the drilling as establishing the thickness of the basalt, that might have been determined by a reflection seismograph survey, which would cost probably \$15,000. In my opinion that would have been the thing to do before starting to drill.

From the time of my first report in October, 1935 to November, 1936, I performed no service for the company. In [489] November, 1936 they had trouble. They had dynamited one hole in an effort to straighten it. That had fractured the whole crystalline formation and tied up the tools. I went to Los Angeles, obtained some heavy drill pipe. We pulled out the tools, cemented the hole and drilled it out and landed a string of tools below the shot hole to prevent more of the formation from falling in. I recommended a survey to determine whether the hole was crooked. That

(Testimony of Ward B. Blodgett.)

was made. Defendant's A-140 is one of the survey maps.

At the bottom the hole was 23 degrees plus off from the vertical. The bottom was very gradual and I considered that this degree of the angle was not serious at that time. The hole was down about 2000 feet. We thought another 1000 feet might penetrate the basalt and we thought it best to continue. There was no reason for stopping or suspending operations or even starting a new well; just continue with it as long as they were in good shape, which they did. I think, as I said in the report, any time the well gets off vertical to any great degree and if it continues to go off that would eventually stop drilling.

I knew there had been some change in the company when I was there the second time. I didn't keep track of it and did not care. I did not know Dr. Meyers was out.

Q. (By Mr. Hile): In your opinion is there any oil in the Frenchman Hills area there in the vicinity of the drilling?

A. No. I never have had any belief that there would ever be commercial oil produced out of Frenchman Hills. I may be wrong but that is my opinion.

I do not know whether the properties covered by Defendant's A-141, A-142 and A-143 were ever acquired. I never appeared before the Board of Directors of the Development Company. I do not think I was requested to do so. [490]

(Testimony of Ward B. Blodgett.)

Redirect Examination

By Mr. Simon:

The fact that the well was approximately a quarter of a mile off the main axis of the structure was unimportant because the structure was so large that the distance away from the axis was unimportant.

Q. In answer to one of the last questions put to you by Mr. Hile you stated that while you didn't know you really did not anticipate that you would find commercial oil under Frenchman Hills?

A. That is right.

Q. What can you say as to commercial gas?

A. Well, I expected to find commercial gas. I might say I hoped to find commercial gas.

Q. Mr. Blodgett, as indicative of your opinion, if you had had money that you could afford to gamble with, would you have purchased leases of the Peoples Gas & Oil Company?

A. Well, if I had been very wealthy I might have taken a lease, yes; but I wouldn't put any quantity of money into a gamble of that nature.

The name of the man recommended dynamiting the well was Myron Zandmer, a petroleum engineer and geologist. I do not know who suggested his employment. I know it was not Mr. Broome. Ralph Arnold recommended him to someone in the organization up here.

In my opinion of November 19, 1936, I said: "In view of the fact that the hole shows a very even and gradual bending as clearly indicated on the

(Testimony of Ward B. Blodgett.)

cross section A, I am glad to say that it is in good condition and perfectly safe for further drilling. The tools are not injured or hung up with fractured material in from the shock zone which has been [491] cemented off. Also in view of the fact that the well is only 215.2 feet north of the well location and is still on structure, and is safe to continue drilling ahead. We should penetrate the basalt within another one thousand feet. We will be on structure and if there is any oil or gas under this immense anticline this hole should be a producer."

Defendant's A-146 to A-151 are letters written by me and responses over the period they indicate, with reference to various matters of the drilling question. A-144 is the proposal under which I was employed. A-145 is a letter written by me to J. S. Swenson.

Defendant's A-152 is a letter I wrote to Mr. Markowitz, dated July 26, 1937. I do not recall why it was written. It was more or less something he wanted. It was more or less a resume of conditions up to that time.

Recross Examination

By Mr. Hile:

The drilling equipment in 1936 was in good shape, except the drill pipe, but at my suggestion they bought an additional string of heavy drill pipe. The off-angle drilling could not have been deliberate.

We often discussed the possibility of finding commercial gas and it was suggested that future

(Testimony of Ward B. Blodgett.)

drilling would have to be reduced in cost to make it financially successful.

I came up once a month, between November, 1936 and September, 1937, to inspect the work.

I understood that Meyers was drilling this well and was going to finance it clear down no matter how much it cost; he was going to go through with the drilling of this well, and that he had plenty of money to do it with and was going to guarantee the well as finished. [492]

Q. Did you retain that impression until you quit work there? A. I did, yes.

Q. And you did not learn anything to the contrary? A. No.

Q. Did they ever offer to give you any leases in exchange for your services? A. No.

* * * * * *

A. The only recollection I have of any change in the picture was that I was instructed to write to Mr. Jorgenson as general manager, and Mr. Broome was president; but there were so many changes in the company and the names and twisting things around, I didn't pay any attention to it as long as I got my check and did the work, I was satisfied.

Q. And did you get your check?

A. I did.

As long as I was there the drilling continued, three towers a day. [493]

D. G. EGGERMAN,

A witness called on behalf of the Defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am a lawyer. I am in my thirty-seventh year of practice, nearly 26 years in Seattle. In 1936 the firm was Eggerman and Rosling. In October, 1936 the firm was counsel for the Peoples Gas and Oil Company in preparing the document A-38. I did not participate in the negotiations preceding or concurrent with other parties. I thought the contract a creditable one on the part of Markowitz and Simons. I felt that they were giving up very substantial amounts in receivables, which they were entitled to retain if they so desired. They were doing that for the prosecution of the well. I remember that one thing that prompted them was a criticism from the S.E.C. that the company was collecting very substantial funds and at least some of that should be used in the development of the well.

My firm represented the Peoples Gas and Oil Company in the Dickason suit.

There was only one occasion when Mr. Donnelly was present during a discussion of the Dickason suit, and the question of a receiver was discussed, which was an evening meeting and Dr. Meyers was not present, at least I did not see him.

Cross Examination

By Mr. Hile:

I do not know how many meetings had been held

(Testimony of D. G. Eggerman.)

with Mr. Donnelly prior to that night, but that night was when the decision had to be made. Rosling, Markowitz, and Simons and Donnelly were present and I believe Mr. Hartman. I did not [494] see Meyers there.

I do not know what was represented to the public about the drilling. There was a contract with the Peoples Drillers. They felt this contract would aid in the diligent prosecution of the drilling.

I thought the funds involved in the contracts turned over by Markowitz and Simons were for the substantial funds. They felt that by turning over the funds criticism directed by the S.E.C. would be relieved. I made no inquiry concerning the monthly collections and don't know whether they diminished or not. I do not recall that Markowitz and Simons told me that at the S.E.C. hearing Meyers was there and had told them he would finish the well with his own funds. Really, I was not interested in Dr. Meyers. I was interested in properly serving Markowitz and Simons, that is all, and naturally I believed that what they told me was the fact as any lawyer will do. I represented Markowitz and Simons only for a period of perhaps one year and a half, beginning after the sale of units had stopped. I was not consulted about the interest of other stockholders or the corporate structure as originally formed. I represented Markowitz and Simons after October 13, 1936 following the proposal Defendant's A-38. I cannot now state for how long. Markowitz and

(Testimony of D. G. Eggerman.)

Simons did not tell me in connection with this proposal that one of the purposes of it was to release Dr. Meyers from the obligation of drilling the well.

Redirect Examination

By Mr. Simon:

I have no recollection of Simons and Markowitz discussing the question of releasing Meyers from any obligation.

The only solicitude Markowitz and Simons evinced was in their own interest and the only interest I had in the matter was to the proper discharge of my duties to them. [495]

A. S. ELFORD,

A witness called on behalf of the Defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I live at Seattle and have lived there for 31 years. Up to five years ago I was inspector of agencies of the New York Life Insurance Company, but I have been retired in the past five years. I was with the insurance company 47 years. I was never a member of the Cascade Tunnel Association, but I attended a number of their meetings.

I recall a meeting or dinner given by defendant Meyers at the Washington Athletic Club about ten

(Testimony of A. S. Elford.)

years ago at which members and friends of the Cascade Tunnel Association were invited as his guests. I cannot fix the time. If I remember correctly, John P. Hartman was toastmaster and an engineer by the name of Strauss was the principal speaker. Defendant H. Harry Meyers was there. I do not remember whether he made a talk. I remember Strauss saying that he was very much interested in the Cascade Tunnel and that Dr. Meyers had interested him in the subject. He spoke in a complimentary way about Dr. Meyers and said had it not been for Meyers there would not have been a Golden Gate Bridge.

Cross Examination

By Mr. Hile:

I never attended any meetings of the Peoples Gas and Oil Company in connection with the sale of leases. I talked with Dr. Meyers personally several times. He never talked to me very much about the bridge. I was interested [496] in the Golden Gate Bridge because I have interests on San Francisco Bay. All I recall of what Meyers said about Strauss was that he was complimentary about him.

I never bought any leases of the Peoples Gas and Oil Company. I was never approached by any salesmen. I attended none of the meetings. [497]

JOHN P. HARTMAN,

A witness on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am attorney at law living in Seattle. I have been in the state 52 years and practiced law sixty years.

I was a member of the Commission appointed by the Governor of the State on the Cascade Tunnel enterprise. I was for many years Regent of the University of Washington. I am one of the founders of the Washington Good Roads Association formed in September, 1899. Those things I do are entirely pro bono publico.

I have known defendant H. Harry Meyers, I think, little over twenty years. I first became acquainted with him through the publication of an article in a London paper about the report of the Commission on the proposed low-level Cascade Tunnel. He saw that article and wrote me from London. Shortly afterwards he was in the Northwest and came to see me. From that time on we have seen each other frequently. I have seen him in San Francisco, California and other places.

He was introduced to Judge Griffiths of Seattle, who was President of the organization, and worked with us and wrote letters and thought he could finance it.

I recall a dinner defendant Meyers gave to members of the Cascade Tunnel Association at the

(Testimony of John P. Hartman.)

Washington Athletic Club. It must have been seven or eight years ago. It seems to me it was before he came out in connection with the Peoples Gas and Oil project. I presided. Dr. Meyers, [498] Joseph B. Strauss, Judge Griffiths and John S. Hudson were speakers.

Q. What, if anything, did Mr. Strauss say upon that occasion about Dr. Meyers' connection with the Golden Gate Bridge project?

A. Substantially, he said that he had been interested in that bridge possibility previously, but could not get over the first handicap, because there had to be an enabling act by the legislature of the State of California, creating a district which could issue securities to be sold to obtain the money, and he did not make headway until he associated with him Dr. Meyers who took charge of that work at the capital, San Francisco and elsewhere to get sentiment in favor, passing the Act. And then afterwards, after the Act was passed and the district created there was also the financial difficulty of selling the securities; and Dr. Meyers engineered that through members in San Francisco, the Giannini bank, particularly; and sold the securities and thus the matter went over. Otherwise, it would not have gone, so he told us.

Q. He said it was due to the activity of Meyers, and if it hadn't been for Meyers the matter wouldn't have gone through. Is that what I understand you to say?

A. That is what he said; yes, sir.

(Testimony of John P. Hartman.)

Strauss said, after the Legislative Act was passed, creating the Board of Supervisors or Directors of the district, it then became a most difficult question as to whether Strauss would get the engineering contract and Meyers took charge of that and did, as he put it, satisfactory work for they got the contract.

In the early spring of 1934 defendant Meyers [499] wrote to me inquiring about the possibilities of gas and oil in the State of Washington. I answered his letter favorably. I doubt if the letter exists now. Thereafter Meyers called and I made arrangements for him to meet Gale Matthews in my office in Seattle, Washington. Matthews said he and his friends had obtained leases on a large area in Grant and Adams Counties. He had maps and contracts and leases which he submitted to Dr. Meyers.

Thereafter my firm was employed as counsel for the several companies. My son, Dwight Hartman, did the legal work almost exclusively.

Cross Examination

By Mr. Hile:

Meyers did, in talking with me, speak of having done large business and sold many securities in the United States and England and Scotland. He was not the kind to boast. I did not inquire how much money he had. We were attorneys for Meyers for five years. I do not know the amount of service without looking at the books.

(Testimony of John P. Hartman.)

I talked with Meyers about his part in the Golden Gate Bridge. He told me substantially what Strauss had told us. Meyers never told me he was an engineer nor that he was a physician or surgeon, Doctor was only a nickname because he had been connected with a drugstore as a boy.

Meyers never told me he was going to put up the money himself for drilling the well. I never heard him say that he was financing the deal. I know he put up \$34,000.00 on one occasion. I know nothing about the original set-up. [500]

GALE MATTHEWS.

A witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I testified before. I am the Gale Matthews who originally had these leases. I started collecting them in 1919 and continued to 1922. Thereafter I just kept them in force. I thought there were oil possibilities in that part of the country because of conversations with various geologists and petroleum engineers.

There were gas seepages in the area and gas was being produced in Rattlesnake Hills. All these things lead me to keep the lease structure intact.

I talked with Marcell Daley, a man of reputation

(Testimony of Gale Matthews.)

as a geologist, a man by the name of Huntley, a man by the name of Otley, from the Gulf country, a man named Eley, who had been connected with the oil business for many years and had helped select some of the Naval Reserve structures, and Mr. Lupton, and many others. I also read a great deal of literature on the matter. I told Broome and Meyers where I had received the information, and to my belief there was gas and oil here.

I saw Exhibit A-51, whether it was in my possession I cannot say. I can't say that I discussed any particular one, but I discussed them all together and undoubtedly referred to the individual reports.

A-157 is a copy of a letter of Charles E. Lupton, consulting geologist. I think I showed that to Broome and Meyers.

A-158 is a copy of a report of Jesse B. Yates, petroleum engineer of Beaumont, Texas, which I think gave Broome at our first meeting in 1931.

A-159 is copy of report by John W. Utley, geologist and petroleum engineer, Marietta, Oklahoma, which I gave them. [501]

A-160 is a report of David Eugene Olson, who styles himself Petrolometer Geologist, which I gave to Broome.

A-161 is a copy of a report by Eric A. Starke, petroleum engineer from California, which I believe I gave to Mr. Broome.

A-162 is in two parts. The first is a copy of a

(Testimony of Gale Matthews.)

report by Wendell Smith. I did not give that to Broome. He brought this to my attention.

A-163 is a report by Solon Shad, Supervisor of Geology. The booklet is entitled "Geology and Resources of the Pasco-Prosser Quadrangles in Washington". Undoubtedly I gave it to Mr. Broome. I know I discussed it with him.

A-164 is a booklet reprinted for private circulation from the "Journal of Geology". An article, "The Spokane Flood beyond the Channel Scab Lands" by Dr. J. Harlan Bretts, Department of Geology, University of Chicago. I brought that to Mr. Broome's attention.

A-165 is a bulletin, Geological Society of America. It is an article by Dr. J. Harlan Bretts entitled "Bars of Channel Scab Lands." The article was first published in the Geological Society Bulletin for September 30, 1928. I brought that to Broome's and Meyers' attention.

Exhibit A-166 is an article reprinted for private circulation from the "Journal of Geology", July-September, 1929 by Dr. J. Harlan Bretts, entitled "Valley Deposits Immediately East of the Channel Scab Lands of Washington".

A-167 reprinted for private circulation from the "Journal of Geology" July-August, 1922. It is two articles, "The Spokane Flood" by Edwin T. McKnight and a reply by Dr. J. Harlan Bretts.

A-168 is a booklet from "Geographical Review", July, 1928, by J. Harlan Bretts, entitled "The

(Testimony of Gale Matthews.)

Channel Scab Lands of Eastern Washington". I brought them to their attention. [502]

I did have a report from Mr. Starke and brought that to Broome's attention.

Exhibits A-157 to A-168 admitted in evidence. I had brought them to their attention. I went over the Frenchman Hills property with Mr. Otley. I spent about a month with him. He made a complete investigation as far as I could see, either late in 1919 or 1920 and he made two or three trips. I was with the party that went over the territory with Dr. Starke. He was over there a few hours. I traveled around a great deal with Dr. Bretts, he made trips into the country every summer for many years.

I learned but little from Dr. Bretts. He did not specialize in petroleum. He was a geologist and we discussed the geological conditions. He made no statement concerning the possibility of gas and oil.

There was one man named Eley, who I was told was connected with the Naval Reserve Structures in Wyoming. He felt that Frenchman Hills was a possible productive structure and was very much interested in it.

I went over the territory with Marcel Daly. He did not say whether he thought there was gas and oil in the territory, but it was his opinion that there were structural conditions that merited investigations as possible productive structures.

From discussions and information that came to

(Testimony of Gale Matthews.)

me I formed the opinion that this was a territory that had a good chance of possible oil and I felt it should be investigated and drilled by someone sometime or other. That was the reason I held the leases.

I think I first met Broome in August, 1931 in my office. I discussed these reports with him. My recollection [503] is that I made the assignments to him in 1932 with the escrow agreement. It must have been in the spring of 1932.

Broome spudded in a validation well and proceeded for awhile and then stopped and in the fall of 1933 I brought action to cancel the assignments, but I did not take judgment, and later dismissed the action after I had met Dr. Meyers, and Broome agreed to assign everything to the new people who were coming into the picture.

I met Dr. Meyers personally, I believe, in February, 1934 in Seattle at the invitation of John P. Hartman and his two sons. I went over with Meyers the possibilities of the area and told him what my opinion was as to securing gas and oil in the region. I told him there were possibilities that merited investigation, that the structure was big, and if there was anything there, in my opinion, it was in large quantities. I told him of the investigation I had made and the literature I had read on the subject. Meyers assured me that he would see that a fair and honest investigation of the structure was made if he made the deal.

Dr. Meyers was vouched for by Hartman & Hartman in whom I had and still have unlimited con-

(Testimony of Gale Matthews.)

fidence. It was their opinion that he would keep his commitments. He did keep his commitments as far as they were made in my presence.

Q. Mr. Matthews, how soon after that meeting was anything done over there at the well?

A. It wasn't long after that until some new machinery was purchased and moved in there, and they started drilling on a larger scale, brought a crew in there. [504]

I visited the operations frequently all the time they were drilling. The crew made mistakes, but they proceeded in a diligent workman-like manner to drill the hole. They had real good equipment. There were no shut-downs except for repairs and fishing jobs.

Exhibit A-169 is a geological map of the United States.

Exhibit A-170 is an unsigned paper by Balentim R. Garfias, excerpts from petroleum resources of the world and concerns basalt.

Exhibit A-171 is typewritten sheet by J. G. McMacken, a teacher of geology.

Exhibit A-172 is a report by J. G. McMacken.

Exhibit A-174 is a photostatic copy of letter by Sheldon L. Glover, assistant supervisor of geology of the State of Washington.

Exhibit A-176 is a booklet by Sheldon Glover on non-metallic resources of Washington.

Exhibit A-177 is bibliograph of possibility of gas and oil in Central Washington.

(Testimony of Gale Matthews.)

Exhibit A-178 copy of letter by W. H. Dutton in 1910 containing log of the well in Eastern Washington-Frenchman Hills.

The drilling ceased in 1937 or 1938 about a year after the receivership. After the receivership I lost interest in it.

I had a geologist there by the name of Charles Lupton, the same man who was the consulting engineer for the well that Tyler Rogers is drilling at Wenatchee. He made an investigation of the entire area, including Frenchman Hills, and told me that where the drilling was going on at Frenchman Hills we had a very good chance to get production. He told me why he was making that statement to me. He said, "Gale, I am an older man than you are. I want to warn you of something." He says, "You have a very favorable contract with those people who are drilling. Many times when people who have not been in the habit of having money come in in large sums unexpectedly, it makes a fool of them". He says, "You have a chance of getting some money out of that development down there by production, and I hope it will not make a fool out of you."

Q. Did you state that to defendant in this case?

A. I did. [505]

Cross Examination

By Mr. Hile:

It was one of the stipulations with Broome, when I agreed to dismiss the suit that he was to assign

(Testimony of Gale Matthews.)

the leases to the group that was coming in so the title would be vested in them and they would have the corresponding obligations.

Where the actual money for drilling was coming from I did not care as long as they drilled. Dr. Meyers never told me he was going to do the drilling, or that he was personally putting up all the money. He did not tell me how they proposed to raise the funds.

When I talked to Dr. Meyers and Broome about the possibilities I gave them the adverse reports, as well as the good ones. They had the whole bunch. I told them I was very hopeful. I did not tell them I was 99% sure. Nothing but the drill would determine whether there was oil or gas. I still think there may be gas or oil up there and that the Frenchman Hills structure should be drilled through the basalt and into the sedimentaries, which I believe underlay it. I believe there is a strong possibility of production there. The basalt has not yet been pierced. We have proved it was 4500 feet thick anyway.

After drilling ceased I did not try to get anybody else to take it up.

I do not think that Meyers ever told me he was going to send up his own geologist to make an investigation. I never saw one reported as being hired or paid by him. I was well acquainted with Ward Blodgett. I do not remember the date he came up.

I did not inquire as to Dr. Meyer's background

(Testimony of Gale Matthews.)

or his fineness. I did not attend any of their meetings. I do not recall statements being made that Dr. [506] Meyers would finish the well. He had not so stated to me. I thought the drilling crew and Dr. Meyers did their best to fulfill his obligation to me to see that a test was made to get through the basalt into the sedimentaries. He did not get through. I think he went as far as he could, and my understanding was that it stopped because of the indictments and the receivership. I never later called upon Dr. Meyers to go ahead and complete the well, as I thought he had done his best and I didn't reproach him for the failure.

I made my assignment to Broome, not to Dr. Meyers. I never received any cash from anybody on that assignment. I never heard of the sum of \$65,000.

Re-Direct Examination

By Mr. Johnson:

I thought and still think that Dr. Meyers had fulfilled his commitment with me, and I could not require him to go further. I thought he had made an honest effort. I do not know what his obligation was to the leaseholders. I know nothing about that aspect of it. I do not know whether Dr. Meyers purchased the equipment himself. I attended several meetings and Broome stated definitely that it was a gamble and not an investment and spent sometime in so stating. There was no question but that he intended to advise all there that it was purely a speculation and a gamble. I never heard

(Testimony of Gale Matthews.)

him say, "If you don't put your money in you should have your heads examined."

Re-Cross Examination

When Broome spoke at the meeting I attended he was telling the people what a good prospect it was and spoke of the possibilities as favorable as I had. I did not hear him say that the drilling was being financed by Dr. Meyers. I heard him say that it was their intention to make a thorough and adequate test of the structure. I did not hear Broome say that it was a speculation and gamble, but that with men, money and machinery they had reduced that to an absolute minimum. I do not recall anything to that effect.

Re-Direct Examination

By Mr. Johnson:

I did not think Broome made any statements concerning the possibilities, other than I had made.

[507]

DWIGHT HARTMAN,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am a lawyer, the son of John P. Hartman, who was on the stand and a member of the law firm of Hartman & Hartman and was in 1934. I have practiced since 1915.

(Testimony of Dwight Hartman.)

I am the lawyer who prepared the articles of incorporation of the Peoples Gas and Oil Company, the Peoples Gas & Oil Development Company, the Peoples Gas & Oil Corporation and Peoples Drillers. These articles are in minute books, Government's Exhibit 11, 12, 13 and 14. I think the articles of the first three companies were executed in California. Each had a nominal capital of 640 shares of the par value of \$1 each. The nominal incorporators are shown in the minute books. According to the Washington State Laws it was not necessary that an incorporator should have a substantial interest in the corporation.

Our firm represented all three companies for a considerable period of time. The stock holders were men who were intimately associated. There was no public stockholding. The individuals had counsel in Los Angeles. M. M. Black was one of the advisers.

I attended to the legal aspects of the merger of the Peoples Gas & Oil Company and the Peoples Gas & Oil Corporation. As a result the shares of the merged company were increased from 640 to 1280. The consolidation was quite ordinary. Both had a community interest and it was better to consolidate. It had a bearing on the tax situation.

I organized the Peoples Drillers. The articles [508] were filed on June 9, 1936. The organization was effected in connection with the increase in the capital stock of the Development Company. I think the primary purpose in increasing the stock

(Testimony of Dwight Hartman.)

was to make the shares available to lease holders and at the same time it was desirable that the job of drilling be in a separate company. That is what the Drillers was organized for.

The idea of allowing the lease holders to convert their interest into stock was put into effect in the spring of 1936. The reason was that lease holders had a right represented by a somewhat unusual incident and at least many people thought that it was an interest in real estate. It was frequently community property and could be conveyed only by the signatures of both husband and wife. There were a considerable number of changes and quite a bit of confusion in getting the necessary signatures to preserve the rights of the new holders. It was, therefore, conceived that there would be less inconvenience if the leases were converted into a paper assignable on itself. I think that was the primary reason for the conversion into stock. There was also the factor that there could be subdivision of interests more readily by means of the shares of stock. Some people also thought there should be some opportunity for the lease holders to express themselves if they chose. In my opinion the equitable and legal rights of the lease holders would be well preserved if they were stock holders.

With reference to plaintiff's Exhibit 266, the signature card of defendant Meyers at the Pacific National Bank, I introduced Meyers to the bank. We went there together and I introduced him to my friend, Bob Walker, the Vice-President. Walker

(Testimony of Dwight Hartman.)

took Meyers and me to Mr. [509] Oldfin and introduced Doc to him, and Mr. Oldfin opened the account for him. I was there while that was done. I do not believe that Meyers said that he was a physician and surgeon. I have never heard him make that allegation. I have heard him say that he was not a physician and surgeon on several occasions.

At one time I prepared a draft of the bill to be presented to the Legislature at the request of Dr. Meyers relative to a toll tunnel. That was not passed, but it was reflected in the toll bridge authority act.

In the Dickason suit our firm represented the Peoples Gas and Oil Development Company, I believe. The matter of a state receivership was discussed at numerous conferences. The conferences were, I think, usually in Mr. Eggerman's offices. I do not remember now who was there. I do not remember whether defendant Meyers was present or not.

I do not remember what was done with reference to the selection of Board of Directors of the Development Company after it had become a public company. I do not believe that I prepared the minutes. I advised about the minutes from time to time and sometimes I was at a meeting for part of the time.

There was a meeting of the directors on October 16, 1936, when the proposal to the Peoples Drillers was presented and put to a vote and carried. I did not represent anybody. I gave advice to the De-

(Testimony of Dwight Hartman.)

velopment Company as requested. I consider the contract lawful. I have thought it was good business. I did not give them any business advice. I represented the Peoples Gas & Oil Development Company. [510]

Sometime the following summer the Development Company made application for a permit to sell participations. I do not believe that defendant Meyers had any financial interest therein.

I do not know whether page 65 of the government's exhibit 13 is the same form as when the minutes were first placed in the book. I had nothing to do with a change in the minutes of the meeting of April 27, 1934. I represented the Peoples Drillers when it tried to get its equipment back.

Cross Examination

By Mr. Hile:

When we started to represent these companies the firm was Hartman & Hartman. Later it was changed to include Mr. Soles and Mr. Simon here and that continued until comparatively recently. They joined the firm in March, 1937.

Before I set up the three corporations I do not know just how the stock setup first came to my attention, but the conversations were *were* Doc Meyers, Bill Broome and Simons. I do not remember Markowitz being in on those conversations, but those three were. They told me how the setup was to be. They told me they wanted three corporations. They did not tell me that they had previously agreed upon this, but it was very defi-

(Testimony of Dwight Hartman.)

nite that they wanted three and the plan was entirely formulated.

The Peoples Gas and Oil Corporation was to hold the leases. The Peoples Gas and Oil Company was to be the selling company, and as to the Development Company, the name is descriptive of its functions. Their plan was modeled on some activity they were familiar with in California. [511]

I think it was Jim Simons who told me about the California set-up. I do not know about the original working capital of \$20,000. That was not discussed with me.

I do not believe they told me how they were going to finance the drilling. The provision that 40% of the amount of the sales was to go to the corporation in return for which the company was to be the exclusive sales agent of the corporation and that in turn a certain proportion of that money was to be given over to the Development Company for drilling sounds familiar.

With reference to plaintiff's Exhibit 8, I did not know of its existence until preparation was made for the trial of this defendant and at that time I purposely never looked at it. I never read it up to this moment.

Q. Well, will you look at it and see if it refreshes your recollection as to anything they told you about it, about the formation of the company?

A. The preamble is in harmony with what they told me. It says here that "the most feasible plan in the first place is to form three corporations, a

(Testimony of Dwight Hartman.)

holding corporation hereinafter known as No. 1, a sales corporation, No. 2 and a development corporation No. 3". I think that is substantially what they did.

There is mentioned here a "community lease". I don't believe they ever had a technical community lease in this deal.

Q. But they approached it, did they not, by their assignment to the Development Company?

A. Oh, it wasn't technically a community lease, I think. Then they explain what they mean by a community lease here, also, which is probably in harmony with what they did. [512]

I don't believe they had a unit A and B, as this seems to provide for.

This does provide for the sales agreement, 60-40.

This refers to loans to be made to do financing. I am not entirely sure whether that was carried out or not. It must have been to some extent, however.

Q. Did they mention that fact to you at that time?

A. No, I don't recall that that was discussed.

This says that No. 2 shall have the same general structure as No. 1 with stock issued in the same proportion to the same entities.

Paragraph two on page one was not literally carried out.

I do not know what happened to the stock after the original stock subscription. I assume it was issued in accordance with the stock subscriptions,

(Testimony of Dwight Hartman.)

but what transfers were made after that I do not know. There was some discussion as to who should be interested and who should be the original stockholders, but I do not recollect the matter. I do not recall being told that each of the defendants was to have a stock interest in each of the corporations, and that [513] Meyers was to have 112 shares or some such figure in the company. It is probable that all of these things were discussed, but my recollection is that their conclusion as to how they were going to set it up was reflected in the subscriptions.

I think I could name those that I can remember as being trustees. I do not believe Clayton was ever a principal. I think Clayton was a trustee for somebody. I am looking at the stock subscription of the Peoples Gas & Oil Company, A. Clayton, 100 shares, \$100.00. In fact, Clayton did not sign this subscription, apparently. It is by J. F. Simons, I guess it is.

Tobe is mentioned here. He is signed the same way. Clayton, I think, I never met, but I have met Tobe. The name "Zeitlund" is there. I am rather under the impression that he was not a principal, but a trustee. That is my recollection.

I did not draw up the original notes for the \$20,000 capital. I never saw them before and I do not recall ever having seen Government's Exhibit 8 before. I do not recall that the defendants Meyers, Simon and Markowitz mentioned anything

(Testimony of Dwight Hartman.)

about what had been expended in acquiring these leases. I do not believe there was anything said about the \$65,000. I do not believe anything was said about Dr. Meyers having spent any money in acquiring these leases. I did not get the impression that he even had the leases at that time. I do not remember anything being discussed as to what Broome was to receive in exchange for the leases.

With reference to Exhibit 13, page 35, Minutes of the Development Company, April 27, 1934, Mr. Simons did discuss with me some changes of the Minutes. It is impossible for me to remember what was in the original minutes exactly, but this [514] \$65,000 transaction, I believe, if in the original Minutes was substantially different. I doubt if it was in the original Minutes at all.

Q. Do you recall that in the original Minutes there was a contract under which the corporation was to get 40% of the sales of leases and 60%, the remaining 60% of course was to go to the Oil Company that sold the leases, and that the Oil Company, under this exclusive sales agreement, agreed to pay 62.5% of their 60% to the Development Company for drilling?

A. Well, that is my recollection of substantially what the original agreement was.

Q. Calling your attention to the Minutes of April 16, 1934, in Plaintiff's Exhibit 11, that is the Minutes of the Peoples Gas & Oil Corporation?

A. It was a companion meeting covering the

(Testimony of Dwight Hartman.)

same transaction. At least there was one. I assume that is it.

Q. There was an agreement, was there not, a like agreement of course?

A. Yes. These meetings were fairly close together.

Q. Now, Mr. Hartman, when Mr. Simons discussed this matter about the change of records, do you recall about when that was?

A. It was during the first three months of 1935.

Q. Well, he said that in making their income tax return they found that they had no capital set up and nothing to depreciate. They should have something. And that he was going to make some changes to create that situation.

Q. Did he ask you for your advice on the [515] matter? A. Yes, he did.

Q. And what did you tell him?

A. I told him he had no right to do it; he shouldn't do it.

Q. I see. You had nothing to do, then, with the drawing of the Minutes?

A. I refused to have anything to do with the drawing of the Minutes.

Simons did not tell me the Minutes should be changed to correspond with the fact that the public was being told Meyers was financing the drilling. I didn't know anything about what representations were being made to the public.

Some advertising matter was presented to me for approval. I do not remember seeing the Broad-

(Testimony of Dwight Hartman.)

side, Government's Exhibit 21 nor Exhibit 32. They had a lot of advertising matter around. I do not remember that they had this with them when they first talked with me in 1934, but my statement to them was repeatedly to be very diligent, to tell the truth and facts which they could substantiate. I do not remember reading there that Dr. Meyers was a millionaire and was going to finance the drilling of the well, or that he was the builder of the Golden Gate Bridge. I do not remember reading that.

I know nothing about the representations made to the public and never attended any public meetings. I never analyzed what was said to the newspapers but confined my advice to the questions they asked me.

I am sure that I knew initially that Dr. Meyers had expressed himself to the effect that he was going to see the drilling through, but I knew he had no legal liability. [516] I did not know that he had any contractual obligation to drill a well and pay for it.

At the meeting of the Board on October 15 and 16, 1936, the question of taking the accounts and the drilling equipment and do the drilling may well have been considered.

I know something about the hearing before the S.C.E.

They probably said they were going to quit selling leases because of the activity of the S.C.E.

I think the idea of giving 8 shares of stock for

(Testimony of Dwight Hartman.)

an acre of leases was Bill Markowitz' originally. I think I discussed it with all of the principals in these companies, including Meyers.

One reason for the plan to convert into stock was the convenience of the leaseholders and it permitted the leaseholders to have a vehicle through which they could have a concerted action, if they cared to.

I helped to draw the documents, which are Government's Exhibits 10-A and 10-B. They were patterned after some forms brought up from California. Whether or not he had a right that could be conveyed by one of the spouses alone was a question asked for practical effect, the lease ownership was not as convenient or as acceptable as the stock.

I do not recall that there ever was a stockholders meeting of the company after the conversion, but in theory the moment the leaseholders became stockholders they became the dominant voice of the corporation. The Board of Directors were not elected. They were chosen by the controlling shareholders. "It was rather self-perpetuating".

On June 9, 1936 there was a meeting of the stockholders. The stockholders were then H. H. Meyers and William A. Broome. [517]

I never knew the stock records were changed. When the program was suggested by Simons and Markowitz I advised them it was unlawful. I got the impression they were going to change them.

I knew that the Peoples Gas and Oil Company

(Testimony of Dwight Hartman.)

was going to issue stock for these leases—I didn't know when it was done.

Some transfers were made shortly after the Directors were appointed, but the main transfer was later.

When the Board was discussing the plan to accept accounts receivable and assume the drilling obligations I recall urging the Board to evaluate carefully the prospects of collecting on the accounts before accepting the plan.

Peoples Drillers was formed June 9, 1936, and was discussed with all of the principals. Its purpose was to do the drilling. At that time Meyers and Broome had the controlling interest in the Peoples Gas & Oil Development Company. It was a transaction between them, the record speaks for itself. It was the plan that the drilling was to be done by the Peoples Drillers and not the public company, Peoples Gas & Oil Development Company. I don't know why the equipment at that time did not remain with the Peoples Gas & Oil Development Company. There was a reason but I do not recall it.

When the three-cornered deal was made on October 16, 1936, the Peoples Drillers transferred the drilling equipment to the Development Company, the Oil Company transferred the accounts receivable to the Development Company and the Development Company undertook to do their own drilling from the proceeds of the accounts receivable under the contract. The Peoples Drillers could take back

(Testimony of Dwight Hartman.)

the machinery if the Development Company failed to continue drilling. I do not believe there was any discussion as to the effect [518] that would have upon the obligation of Meyers to keep on drilling.

There was an attempt to repossess the equipment by the Peoples Drillers, the case went to the Supreme Court of Washington, and it held the contract was ineffectual and the Drillers was unable to get the equipment back.

At the time of the Dickason suit, when the proposal came to have a state receiver appointed, it was suggested that it might be possible in the state court to get a friendly receiver and it was hardly expected as possible in the Federal Court.

I have been told that Meyers represented that he would drill the well out of his own finances and see to it that a thorough and adequate test by drill would be given. He told me he would see that there was a real test made. I made no demand upon him, it was not my province to do so. I knew the funds of the Development Company were getting low and I believe loans were made to it by Simons and Markowitz, and that those loans were made because it did not have sufficient funds to operate.

If the books reflect that the Hartman firm received a total of \$14,000 fees from these companies I would not say that that was wrong.

(Testimony of Dwight Hartman.)

Redirect Examination

By Mr. Simon:

In the conversation with Mr. Simons in which I told him he had no right to make any change in the Minutes I do not recall that I said there was any failure to reflect what the deal was. I was rather incensed that he should tamper with the Minutes and I did not like it and possibly did not discuss it with him as fully as I might have.

[519]

If they had a business arrangement that was not reflected in the Minutes, it could have been put in the Minutes properly by bringing it before the meeting and frankly admitting they were wrong and correct them. The objection I had was to the method of changing the Minutes.

Mr. Hile asked me relative to the character of interest held by a leaseholder who had made the assignment to the Development Company. During the recess I thought it over and believed that the interest was too close to being real estate to make it safe to transfer without the signature of both husband and wife. The transfers became involved and expensive. A number of mistakes were made and it took an endless amount of checking to be certain that everything was all right with respect to each transaction.

The Development Company never, so far as I know, made a demand on the Drillers or Dr. Meyers to continue the drilling, nor notified them it had ceased drilling.

(Testimony of Dwight Hartman.)

I think the Board of the Development Company was quite an independent Board in their mental attitude.

Recross Examination

By Mr. Hile:

I do not remember that the Board of the Development Company turned down the proposition to apply for a permit to sell participations. I know that they were very reluctant to engage in that. Markowitz and Simons, through their 270,000 shares of stock, could choose the Directors, but I do not believe that they were in control of the Board of Directors. I believe McEvers and Mr. Jorgenson resigned because of their opposition to the participation plan. [520]

I did not think it was necessary to change the books and records in order to establish the valuation of the leases and I do not think so now.

[521]

WILLIAM H. HARRIS,

a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am an attorney at law at Seattle and have lived in Seattle for 55 years. In 1936 I was associated with Don McDonald, under the firm name of Gar-keek, McDonald & Harris.

(Testimony of William H. Harris.)

My firm represented the Peoples Drillers in 1936 in the matter concerned in defendants' exhibits A-39, A-40, A-41 and A-44.

Dr. Meyers asked me to go to George Whittle's office in the Smith Tower and attend a meeting of the Directors of the Peoples Drillers, at which meeting these Minutes were taken up, and I returned to my office and drew the Minutes of the Meeting of the Directors, which is Exhibit 62. It was my opinion at that time that it was a legal contract. I knew nothing at that time to criticize about the transaction.

Cross Examination

By Mr. Hile:

I knew nothing about the purpose of the transaction. I just took care of the legal end of it, and knew nothing further about it until this morning when I heard the discussion about the case in the Supreme Court. [522]

G. B. NYHAGEN,

a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

A live in Seattle and have lived there for thirteen years. I have been a salesman nearly all the time. I am in a hardware store now.

(Testimony of G. B Nyhagen.)

I know defendant Meyers and did know Jim Simons and Bill Markowitz. My family bought leases from Peoples Gas and Oil Company and we had probably 120 acres.

I attended public meetings, all of them except three, from 1934 until the receiver was appointed in 1937. I also attended the salesmen's meetings. I was with the receiver for awhile as one of the salesmen.

I heard Broome speak. I do not know how many times Meyers was present when Broome spoke. I never heard Broome introduce Meyers as a millionaire or multi-millionaire. He said Meyers was associated with the Strauss Engineering Company. He never said Meyers was engineer in charge. There was nothing said about Meyers as an engineer. There was nothing said about how many bridges Meyers had built. There was nothing said about his wealth. He was going to see that the well was drilled and finished. There was nothing said about Meyers being a physician or surgeon. The reference to the leases as being a speculation and gamble was repeated at every meeting and it was stated that if you could not afford it, you should keep your money in your pocket.

Q. Anything else said in regard to it?

A. No, that is all that was said about that. That was repeated all the time, both in our sales meetings [523] and also at the meetings, that it was a gamble. The salesmen were instructed every morning to just tell the people it was a gamble.

(Testimony of G. B Nyhagen.)

Q. And during those meetings in the Eagles Auditorium or at any of the salesmen's meetings will you state whether you heard anything about having your head examined?

A. I never heard anything about that.

There was nothing said to the effect, "There would be oil by Christmas. I never heard any statement made that, "He was 99.9 percent sure there was oil in Frenchman Hills.

With reference to whether there was gas and oil in Frenchman Hills, all that was said was that the prospects were good; there was a good strong gas showing at 98 feet. Broome was not sure that there was oil there, but in his own mind he thought there was or he would not have started the project. He had heard several engineers say that there was oil.

He said the drill would tell the story.

The bulletins, Defendant's Exhibits A-4-5-6-7-10-11-12, were handed out in the office and posted on the bulletin boards to read.

Cross Examination

By Mr. Hile:

I was a salesman from the spring, 1934 until the receiver came in and then I worked for the receiver up to January or February. The sales manager was Derby Markowitz. Bert Fisher was at the beginning for a short time.

Our family had twenty acres each, my brother, my sons and daughters. They were all over 21 years of age and the leases were purchased after I became a salesman.

(Testimony of G. B Nyhagen.)

Mr. Meyers spoke once in awhile, not very often. [524] I do not recall that he complimented the sales force on what they were doing. He might have done so, but I don't recall it.

I used Government's Exhibit 32 in the sales campaign.

It says there that Meyers was connected with the Strauss Engineering Company, who was building the bridge.

The article in the Tacoma Times, May 3, 1935, to the effect, "Dr. Meyers is given credit for starting the San Francisco Bridge", was not told to me nor did they tell me to use it in my work.

I have seen the article in the Puyallup Valley Tribune to the effect, "Associated with the Company is Dr. H. H. Meyers, well known for the great projects which he has sponsored, notably the Golden Gate Bridge".

They did not tell me that at the meetings.

I saw some write-ups about Dr. Meyers as a financier and as principal in the Strauss Engineering Company, now constructing the Golden Gate Bridge; but they did not tell me that.

I showed Exhibit 32 to my prospects, but did not read it to them. I did leave it with them to read.

I read the articles but did not check on the statements contained in them. They were merely newspaper write-ups.

I didn't know that Simons was going out and getting this publicity. I used this document, "Com-

(Testimony of G. B Nyhagen.)

merce and Industry'' magazine. That was in the sales kit.

Q. It says, "The company is headed by Simons, includes H. Harry Meyers, a principal in the Strauss Engineering Company"?

A. Yes, I heard that.

Q. Well, didn't they tell you that at the meetings?

A. No. [525]

Broome never claimed in public, that he was a geologist or a petroleum engineer.

Broome said these leases were a speculation and a gamble, but he did say that they had the money, men and machinery. They always talked about the men, money and machinery at these meetings, but that wouldn't reduce the risk.

The remark was made that Meyers was going to drill to China if necessary and they were going to drill six or eight holes, if necessary, to give it a thorough, adequate test. They said they were going to bring in this well first, then call in geologists to find out and check the log.

Q. (By Mr. Hile): Did you know that Simons and Meyers and Broome and Markowitz were to have shares in each of these three companies?

A. I did not.

I did not know there had been changes made in the books, that parts had been deleted and taken out. I did not know that the original agreement contemplated that the drilling was to be done from the sale of leases.

(Testimony of G. B Nyhagen.)

I never heard that Meyers was personally drilling the well.

Q. (By Mr. Hile): Did you read in the January 10, 1936 issue "Peoples Progress" Dr. Meyers' purported interview with Mr. Blodgett, wherein he said: "In the course of our conversation, Mr. Blodgett made the remark that the thickness of the basalt and the luck which we will have with our equipment would be a determining factor. He stated that cost of drilling Donnie Boy No. 1 might run another hundred thousand, or that it might cost half a million dollars in order to reach the possible productive horizons underlying this basalt. I am fully prepared to spend whatever it may [526] take, and will spend it cheerfully."

Did you read that?

A. I don't remember that.

I told my customers it was a gamble and we wanted to see whether there was oil there or not.

I did not tell my customers where the money went that came in from leases. I did not know where it went myself.

Redirect Examination

By Mr. Johnson:

Broome told me he had learned what he knew about oil the hard way and not from text books.

When I bought my leases I bought them as a speculation.

The stock structure or any changes in the minutes by Peoples Gas & Oil Company made no difference

(Testimony of G. B Nyhagen.)

to me. I got a fair and square deal as far as I was concerned in the money put into our leases.

Re-Recross Examination

By Mr. Hile:

Meyers said he would see the well finished.

They could not finish the well, when the receiver took it and busted it up. If the Development Company had not been hounded the hole would have been finished. I know the receiver went to Meyers and tried to get him to finish the well. The bills were taken care of the first of the month, according to Mr. Emerson, who had charge of it. The drilling went along as before until the receiver was appointed. [527]

MRS. MINNIE CULVER,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I live at Seattle and have lived there about 26 years. I have no family. I bought a lease from Peoples Gas and Oil Company. I had one, my husband has one, and our children three. They are two and half acre leases. Before purchasing I went to one or two public meetings and a lot of them after. Dr. Meyers was there two or three times when we were there. That was in the Eagles Hall in Seattle. There was nothing said at those meet-

(Testimony of Mrs. Minnie Culver.)

ings as to who Dr. Meyers was except that he was backing the project.

It was in the papers and was said that Meyers was connected with Strauss in the Golden Gate Bridge. There was never any statement made that he was the chief engineer on the project, or that he was an engineer. I know Myers and his family. I know his wife. No statement was ever made about his wealth, or that he was a millionaire or multi-millionaire.

At every meeting Broome said, if you couldn't afford to put your money in, to not put it in, that it was a speculation; that they were going to continue to drill until they found out whether there was oil or not, but only the drill could tell. Broome said he thought there was every indication of oil and he thought they were getting very close to it. We bought our leases on the basis of a speculation and they fulfilled their obligation to us.

Cross Examination

By Mr. Hile:

At the public meetings they simply said that Dr. Meyers was backing it. I never heard the statement that he [528] was going to drill with his own funds. He would just back it and see that it was finished. They said that Meyers was connected with the construction of the Golden Gate Bridge.

Q. Did they tell you what he had done?

A. No, excepting that he had his money in it.

Q. Had his money in the Bridge?

(Testimony of Mrs. Minnie Culver.)

A. Had some money in the Bridge and he was financing, helping the Bridge, and he was in the construction of the bridge with the engineer.

Q. Did he say how much money he had in the bridge?

A. No, that I couldn't say.

I never heard Dr. Meyers say he was a financier, or that he was a millionaire. They did not say he was responsible for the Golden Gate Bridge, or that he was primarily responsible, or that he had financed a number of law suits in connection with the project. Broome said they might have to drill other wells to prove the structure, but not until they had finished this one.

At every meeting I attended, Broome said it was a speculation and a gamble and if you wanted to speculate you should buy. They had the men, money and machinery, but it was up to you if you wanted to speculate.

Broome spoke at these meetings to sell leases, I guess, because he thought they were good. They gave door prizes at some of the meetings. I do not know whether they served food. I did not go to all of them, but there was a door prize a time or two. They passed out white cards and got names and addresses of people there. I believe I wrote down my name and address and left it at the door as we went out.

I have visited Dr. and Mrs. Meyers since becoming acquainted with this project.

Dr. Meyers asked me to come here to testify. [529]

(Testimony of Mrs. Minnie Culver.)

Redirect Examination

By Mr. Johnson:

As far as I know they went as far as they could and I am satisfied because I knew it was a speculation.

Recross Examination

By Mr. Hile:

I knew they got into basalt but didn't think they got clear through. I was not following that part. What *we waiting* for was to see the oil.

We went up to the plant but I don't know whether they went as far as they could or not.

Re-Redirect Examination

By Mr. Johnson:

I didn't know anything about the mechanics of the thing. So far as the representations were concerned they fulfilled them. [530]

WILNER CULVER,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I am the husband of Mrs. Culver who just testified. We went to the meetings of the Peoples Gas and Oil Company and bought three leases, one in each name and one jointly, the first one in about 1935. We attended no meeting before that, but had heard of the leases through Miss Hamburg of Yakima.

(Testimony of Wilner Culver.)

I understood the leases were a speculation. Broome made no "Ivory Soap" statement of being 99.9% sure. He did not say one would know there was oil, "only that from the knowledge of geologists in the past thousands of years, that everything would indicate that there was oil there, and very strongly indicate that; but would not know until the drill went to the bottom, which is always true in oil."

I understood that Dr. Meyers was well fixed financially and was able to back this thing up. I did not hear any statement that he had one million or fourteen or seventeen millions, nor a billion.

I understood he was connected with the Golden Gate Bridge and deserved a lot of credit for what he had done there; but didn't say in what capacity. No statement was made that he was an engineer nor that he was a physician or surgeon.

They gave us to understand that if one could not afford to speculate he should not do it, but if they could they would advise him to do it. I did not hear any statement about having one's head examined. [531]

They did not make any statement concerning how much oil there might be found, "only that if they did get oil there, all the indications were that it would be a large amount; be a very heavy producing well." They emphasized it was a speculation and a gamble—they brought that out very strongly, and that was the basis on which we bought leases.

(Testimony of Wilner Culver.)

I believe they fulfilled their representations with reference to drilling to the best of their ability.

Cross Examination

By Mr. Hile:

We bought from Miss Hamburg first.

Q. Did she tell you anything about the project and who was back of it, and how they proposed to finance it?

A. Yes. I don't know that I can recall all the conversation but she said there was plenty of funds back of it to put it through, and she stressed more largely how much good it would do the state if oil was brought in in Washington.

Q. Of course you knew any oil well drilling was a speculation? A. Certainly.

Q. But you were interested in seeing how much of that had been removed? You wanted to be sure that the well was going to be drilled sufficiently deep to give it a test? A. Yes.

Q. To give it an adequate test, in fact?

A. Yes.

Q. That was when Miss Hamburg told you there was plenty of money to do that?

A. Yes, she felt sure there would be plenty of money to put it through. [532]

She talked about Mr. Broome more than about Meyers. She spoke about how much good it would do the state.

Q. What did she say about Broome?

A. Well, that he had been over that ground

(Testimony of Wilner Culver.)

thoroughly before and he had had engineers examine it very thoroughly, and all indications were it was almost sure that they would get oil, according to indications, geological indications.

At one of the meetings we attended Meyers was there.

Q. Did he say that he would see that that well was finished?

A. That is my understanding of it.

Q. Did they say or did he say that he was going to give it a thorough and adequate test, so that you people would get a run for your money?

A. That is right.

I do not think the statement was made that Meyers was financing the drilling with his own funds. He was back of it, would back it up, and see it through with his own money, if necessary. My understanding was that what the people were paying was used for drilling, as far as possible, and if they needed, why, Meyers would come through with it and see it through.

Q. Well, that was—you never did hear then that Meyers was financing the well himself?

A. No, not without other money, too, that they were getting from the people.

Q. I see. And when Broome said it was a speculation and a gamble, didn't he say that they had the men, the money and the machinery and would reduce the speculation down to the lowest possible point?

A. I don't know whether they used those exact words, [533] but it was something equivalent to that.

(Testimony of Wilner Culver.)

I know I remember one evening when I was down at the meeting at the Eagles Hall he explained what fine machinery they had; it was the finest in the world for oil drilling; in fact they had been complimented from Texas and other places what wonderful machinery they had.

Q. And they had the backing to do it with; to give it a thorough test? A. Yes.

Q. And would not run out of money, and be unable to give it a test?

A. No. As I understood, they were going to have plenty to carry it through.

Q. And you say you understood that Mr. Meyers was connected in some way with the Golden Gate Bridge and was entitled to a lot of credit for what he had done? A. Yes.

Q. Did they say what he had done in connection with the Bridge?

A. I don't think they stated that he built the bridge or was chief engineer or anything like that, only he had been connected with it and deserved a great deal of credit for whatever he had done in connection with it.

I had quite a conversation with Meyers on a train at one time, but I do not recall asking him about the Golden Gate Bridge at that time.

Q. Did you discuss with Dr. Meyers about his wealth, how much he was worth?

A. No, not as to any definite figures or anything.

Q. No, not any definite figure, but you understood he was a very wealthy man, did you not?

(Testimony of Wilner Culver.)

A. Yes, I understood he was a wealthy man. [534]

They advised if you could afford to buy, you should because there was a good chance to make some money.

In speaking at a meeting I do not think Meyers said he was a philanthropist. "I do think he said if he made any money out of this that he would use it and do a lot of good with it".

They never drilled through the basalt. He would have done it if he could but you can't take a man's machinery away—a carpenter can't saw wood if he hasn't got a saw. I don't think anybody would have gone ahead and drilled after that machinery was taken away by the receiver.

Redirect Examination

By Mr. Johnson:

The drilling went on up to the time the receiver was appointed. I don't know what was done after that. They had good machinery. I believe I got a fair return for what I put in and I still have confidence in Dr. Meyers. [535]

ALBERT OLSON,

a witness on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I live at Seattle. I have lived there since 1919.

(Testimony of Albert Olson.)

I am 47 years old. I bought leases from the Peoples Gas and Oil Company.

I was a salesman from November, 1934 until after the receiver was appointed. I attended meetings both before and after I bought leases. Meyers attended a few when he was in town. Broome introduced him as his partner in the Development Company. He did not say anything about Dr. Meyers' wealth, "only that he was financially able to carry the operation through".

About Meyers connection with the Golden Gate Bridge, he said, "only that he was associated with Strauss and was building the Golden Gate Bridge."

I never heard any statement that Meyers was the chief engineer or an engineer on the bridge, or that Meyers was supposed to have built bridges or that he was a millionaire or multi-millionaire.

The speculation and gamble feature was brought home at least twice in every meeting.

Broome never made the statement that this was 99.9% sure thing. I purchased leases on a pure gamble, that if it hit I made money, if it didn't I lost what I put in.

In selling I followed instructions in the bulletins, and the bulletins said it was a gamble and a speculation.

I had a letter sent through the mails saying *they* [536] they would not tolerate any misrepresentations as to anything being a sure thing, it was purely and simply a gamble.

I was at the well about twelve times. They were

(Testimony of Albert Olson.)

drilling every time until they brought Zandmer in there and he tried to take over and dynamite the well and ruined it. He claimed to be a geologist but it was found he was not. He was recommended by Cohen of the State License Department. Meyers and the drillers were making an honest effort to fulfill the commitments as far as they were able until they were stopped.

Cross Examination

By Mr. Hile:

What I told customers in selling them I got from the sales meetings and public meetings, and Peoples Progress, and clip sheets. I never told the prospects that Meyers was a millionaire. I sold to Paul V. Douglas, a fireman at Seattle in 1935.

Q. I will ask you if in selling him his leases you didn't tell him that Meyers was worth twenty-five million dollars and was the builder of the Golden Gate Bridge?

A. I never did say such a word and never have in any statement made any remarks as to his wealth or financial ability.

Q. Money was no object and Meyers had lots of it?

A. Meyers had plenty of finances to carry it through.

Q. And at least six holes would be drilled on Frenchman Hills?

A. I never made such a statement that any number of wells would be drilled.

Q. You never said anything like that? [537]

(Testimony of Albert Olson.)

A. I never made a statement as to the wells in his presence.

I was never told at the meetings that Meyers had built the Golden Gate Bridge.

I used the clip sheet, but I never used it to sell leases. I only used it to show what publicity the Development Company had received in the state.

Mr. Hile: All right. Seattle "Star", December 3, 1934, Plaintiff's Exhibit 32, which says: "Dr. Harvey H. Meyers, who constructed the Golden Gate Bridge across San Francisco Bay is developing Frenchman Hills". Isn't that what it says? Did you investigate that?

A. What they say had no interest at all to me. All I was interested in was the investigation that the man—had reliable men at the back of it, and the men associated with them were not associated with any kind of wild promotions up in here unless it was a legitimate proposition.

I knew some of the statements were in the clip sheets, yes.

Q. Did you know about a statement in the clip sheet that you were using: "Dr. H. Harry Meyers, principal in the Strauss Engineering Company, now constructing the Golden Gate Bridge". Did you know that was in there?

A. I knew it was in there. I knew he was no engineer, more than that he had made the contacts and the negotiations with the men that went ahead and built the bridge. Meyers is no engineer and has said so time and again, that he was no engineer.

(Testimony of Albert Olson.)

Q. Do you know he has said he was an engineer?

A. He never has said he was an engineer.

The papers said Meyers was the principal in the Strauss Engineering Company, but what the editor said did not mean that he was the principal. Meyers told me he was [538] connected with the Strauss Engineering Company that carried on the operations. I don't know how the papers got their stories.

Broome said at the meetings that we had gone as far as possible to eliminate all the human gamble as to finance, equipment and men, but that only the drill could tell the story as to whether there was oil. You may lose every cent you put into it. He never made statements about having one's head examined, or, "If you wake up some morning when the paper comes out about oil, and if you haven't invested, take an aspirin and go back to bed."

They did not tell me that Dr. Meyers was financing the well out of his own money. I was satisfied regardless of where the money came from. I did not ask or care where the Development Company was getting the money.

I read Peoples Progress.

Q. Didn't you understand from that that Meyers was putting up this money; that he would put up \$100,000.00 or \$500,000.00 if necessary?

A. I don't care how they put the money up. They were operating and they had to put the money up and I was satisfied with the reputation that I had gathered from my own information in Califor-

(Testimony of Albert Olson.)

nia, and from men that they were legitimate men; that they were there to take it; that they were carrying the operation through.

I do not know of any dividends paid out of the operation and I don't care.

They were going to finish the well and would have finished if they weren't interfered with.

I told Mr. Douglas when I sold him leases, that it was purely a speculation and a gamble. [539]

Redirect Examination

By Mr. Johnson:

There was never any claim that they owned leases at Rattlesnake Hills. They did say there were some leases in escrow.

I talked to Mr. Roberts in 1938 and he said Frenchman Hills was a structure and he would like to have seen it completed.

Recross Examination

By Mr. Hile:

There was an article in "Commerce and Industry."

Q. You didn't use your sales kit?

A. Didn't have to use my sales kit. I put my own word up in regard to it—contract, and the men at the head of it and I didn't have to use all the material to sell. I told them it was a gamble, a speculation, and if they couldn't afford it, all right, if they couldn't to keep their money themselves; that we were out for legislative purposes to develop the State of Washington, and what I was interested

(Testimony of Albert Olson.)

in was the State of Washington, to see oil production in here.

Q. So they bought just on that statement?

A. Yes, that it was a gamble, yes. [540]

WILLIAM R. HOPKINS,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I live in Cleveland, Ohio. I am president of the Belt & Terminal Company in Cleveland and have an office in New York City. I am a lawyer by profession, but for many years I have practiced only for companies and enterprises in which I am interested or for people with whom I am connected.

When I was in Law School I was elected to the City Council of Cleveland, Ohio. I was a member of the Board of Elections for four years. In 1923 I was elected City Manager of the City of Cleveland and served until 1930. In 1931 I was again elected to the City Council.

I first met defendant Meyers in the fall of 1914. I was in New York trying to finance a Cleveland subway system and he was introduced to me as a man who probably could help find the money. I checked up on him and found he had access to some of the best investment houses in New York City, and that he had their confidence and was in good standing.

(Testimony of William R. Hopkins.)

That his acquaintance with them was based on connections he had had with them abroad. He introduced me to four of them, all of whom were capable of financing the project. They looked into the proposition and decided against it because of the war situation. It was never financed later.

I was worth between a million and half and two million dollars when I met Meyers. I associated with him in New York and occupied the same apartment with him in different places for four or five years. He was not married [541] then. He married in 1925.

I would say he knew more important people here and abroad than any person I have ever known. He was always a very welcome person wherever he went and had the friendship of a lot of important people. Among English people was Sir Derrick Werner, whose father was one of the South African diamond people. When he came over he immediately contacted Harry Meyers and sort of looked to him as a father for advice. Sir Derrick's father was Sir Julius, a very rich man, and Sir Derrick must be a very rich man. He lives in this country now, in New Jersey.

Meyers had connections with the British Purchasing Commission and the French Commission, and all sorts of foreigners.

In this country he was evidently well acquainted with the Baruchs, especially with Barney Baruch's brother, Salin. I met him. I met Otto Kahn of Kahn-Loeb, Mr. Listberger of Listberger Brothers,

(Testimony of William R. Hopkins.)

and Charles Schwab of Bethlehem Steel. He seemed to know everybody of any account and they knew him.

Meyers never told me he was a physician. He always joked about it. He had been in the pill business. I think he went to England originally to sell what we call antiphlogistine and over there it is called "Mother's Poultice".

Meyers never said he was an engineer. I do not think that he ever mentioned his wealth at all. Whenever there was any money needed he would always say how much, he would furnish, and furnished it promptly. He always lived well. He always had money for anything he wanted to do and always met his obligations. He never asked to borrow any from me. If between 1914 and 1925 he had asked me for any money I would gladly have loaned it to him. [542]

Early in 1915 Meyers and myself engaged in a Manganese proposition in Virginia and organized the United States Manganese Corporation to take over the operation. It was just a little private company. There was no public offering of stock. Dr. Meyers contributed his third.

Later we merged with Seaboard Steel. We sold the United States Manganese to Seaboard for Seaboard stock. Seaboard had operated the furnace. It had been idle for sometime. As soon as it was in shape we started shipping manganese ore to Temple, Pennsylvania where it was located.

Defendant Meyers was treasurer of Seaboard

(Testimony of William R. Hopkins.)

Steel and on the Board of Directors. I was president of the company and on the board. The other members of the board were August Hecksher, Mr. E. J. Lavina, E. Fairfax Busch, C. M. Smith and I am not sure, Granville Mooney and myself, seven directors. The combined net worth of the men on the board of the Seaboard Steel was \$75,000,000.00.

Two things happened to Seaboard Steel. The manganese ore on the Virginia property was about four or five percent of what the experts had estimated it. The other thing was that the Armistice was declared about a year before we thought it would be and we had a lot of maganese ore on the water front at Brazil, the value dropped to practically nothing. That's what carried the company down. It operated for sometime on pig iron, but could not make any profit so the company was wound up in a federal receivership.

The company never sold any stock. The stock was issued to the people that had the furnace and the mine, respectively. After the company had been in operation for sometime and making a very handsome profit the people who owned the stock sold it to various people. I do not know whether the defendant Meyers ever sold any of his stock. [543]

I was very familiar with Meyers' activity in the Translux enterprise until they started to use the curtains in the stock exchange houses. By that time I had gone back to Cleveland.

Meyers and I occupied the same offices and I knew pretty much everything they were doing, although

(Testimony of William R. Hopkins.)

I was not interested in that particular venture. It came up while I was in Europe in the spring of 1919, but when I got back home I met John Troeger, the inventor of the screen and later met his son, and from then on I helped in whatever way I could with advice because at the start they simply had a chemist's formula for making material for a transparent screen, a very bare beginning of a very, very difficult thing, and they had problems in making the metal plate. In fact, I got them the men who solved the mechanical problem, who were Granville Mooney and Ernest Jarvis. Granville Mooney was a man of great ability and wonderfully fine disposition.

Q. Did you ever hear at that time that the Troegers couldn't get along with him in the development of the Translux patent idea?

A. I did not know that he had trouble with them, at least with the father. Of course, the son, that is different.

Q. (By Mr. Simon): Do you know of your own knowledge whether this development of this idea of Dr. Meyers resulted in a commercially successful venture?

A. I know that it did and I know what they had to go through to do it.

I met Mr. Joseph B. Strauss a number of times. He was first introduced to me by Mr. Meyers in the Roosevelt Hotel in New York about 1927 or 1928. According to what they both said then they

(Testimony of William R. Hopkins.)

were then working on the Bay Bridge in San Francisco. [544]

I met Strauss a number of times later. One time in 1928 he came to my office in the City Hall in Cleveland, when I was City Manager, with a letter from Meyers saying that Strauss would like to have the opportunity to figure some of the bridges we were building. At that time we were getting ready to build quite a number of bridges, but the most immediate was the Main Street bridge and I saw that he got the plans for that bridge. He told me definitely that he was associated with Meyers and he came to me as Meyers' associate.

In the summer of 1930 I went out to California and met there Strauss with Meyers at the Palace Hotel. I went over and saw Bill Burkhardt who was running the Scripps-Howard paper then, whom I knew. I really went over there because I wanted to talk to him myself to see how they were making out.

I met Mr. John S. Swenson twice at my office in New York. He wanted to know all about Meyers' activities in New York and I told him. I told him substantially what I have repeated on the stand this morning. He told me a lot of things about matters out here and I told him that it didn't match with anything that I knew. None of the things he talked about were anything like any of the things that I knew about Meyers and I thought he must be mistaken.

Over the period of years that I have known H.

(Testimony of William R. Hopkins.)

Harry Meyers I am familiar with his reputation for honesty and for being a law-abiding citizen. That reputation is the very best. I am familiar with his reputation for truth and veracity. It is fine. He was a man who always did whatever he agreed to do, and it was perfectly evident—the people that I took him to all seemed to deal with him on that basis, that he was a responsible, reputable person. [545]

Cross Examination

By Mr. Hile:

When I first met Meyers in 1914, the man who introduced us had known him in London, and said in a general way that Meyers was a very successful fellow and had a lot of money. I do not recall Meyers specifying anything regarding making a million dollars or half million dollars in London and bringing it over with him. I was interested in finding a man who could make contacts with people who had seven and a half million dollars to invest in a subway.

I think he was going to receive the usual commission, five percent, if he put me in touch with people who had the money. I do not recall any agreement in writing, but it was good whether it was in writing or not. I could have gone to these investment houses myself, but when a man walks into New York cold and tries to get money he has just as much chance as the proverbial snowball.

Q. (By Mr. Hile): These people had repre-

(Testimony of William R. Hopkins.)

representatives in your home city and you were well-known there?

A. No, they didn't; none of these people had representatives in Cleveland. But what is more,—and I have had a long experience, and I feel qualified to say this: unless a man has personal connections with some of the top people in any of these investment houses, he cannot get serious consideration at all.

Q. No matter what kind of an issue you have?

A. That is true.

Q. Or project you have, they are not interested [546] mainly in whether it will yield money or not; they are interested in your connections, is that right?

A. You see we wanted this money to build a subway.

Q. I understand.

A. Entirely a speculative project, you see.

Q. Was a public project, was it?

A. How is that?

Q. Public, of the city, or was it an individual property? A. Oh, not the city, no.

Q. It was your own project?

A. It was a company that held franchises from the city.

At that time there was only one other subway in the United States and that was in New York, and we were proposing it in a city at that time of about 750,000. We wanted to put it in for a profit or loss. The project never materialized, because con-

(Testimony of William R. Hopkins.)

ditions after the war changed so that a five cent fare subway couldn't pay its way. It was necessary to have a man like Meyers to introduce me to the financial houses.

The next business association with Meyers was on the Virginia Manganese Mining project. That came up while we were trying to do the other. Three men got together and agreed to put up whatever money was necessary to buy the property and complete the mechanical equipment. Meyers put up one-third in cash of almost \$50,000 required.

There were two major companies. One was the United States Manganese, which we exchanged for Seaboard stock. [547] The other, the Union Manganese, was an entirely separate thing. We each put in originally the total was between \$30,000 and \$40,000. That was in 1917. The business of the Union Company was to operate property further down on the Norfolk & Western Railway. We operated the Union until the Armistice and then we stopped. I cannot tell you how much money we made.

When we sold the holdings in the United States Manganese to the Seaboard Company I must have received 10,000 shares because that is what I have and I never sold any. I think Meyers received the same. I was president and he was treasurer of the Seaboard Steel and Manganese Company. We actively ran the company.

To finance Seaboard Steel there was a \$250,000 bond issue sold. A. S. White & Company took the

(Testimony of William R. Hopkins.)

bonds and they were a distributing house and sold them.

The company in 1917 and 1918 made a great deal of money. No dividends were ever paid to stockholders. We spent a lot of money on a furnace at Temple and we paid to the government a lot of taxes.

Meyers received a salary of \$12,000 a year as treasurer and I got \$25,000 as president. Mr. Hartley Wooley, who was in charge of the furnace operations, according to my recollection, received \$1000 a month. These salaries were paid I should say from early 1917 to early 1921.

Meyers stayed with the company until the receivership in 1921. It was a friendly receivership. The bond holders did not get paid off in full. I do not recall what percentage they received because I had nothing to do with the receivership. [548]

The amount of outstanding bonds (at the time of the receivership) was somewhere between \$225,000 and \$250,000. Those bonds received whatever the property brought. I do not know how much it brought. Only last summer I received a dividend on a Seaboard claim that I had against it. The government paid a claim of about \$25,000 because at the instance of the government we spent a lot of money on the Virginia property. Part of the money received from the government went to the people who prosecuted the claim. Of the United States Manganese Corporation I was Vice Presi-

(Testimony of William R. Hopkins.)

dent and Meyers was treasurer. I do not recall who the secretary was. I cannot remember what salaries were paid. That company went into a receivership in Virginia. The receiver of the Seaboard Company put in a very large claim against the United States Manganese for advances after Seaboard had bought the company. I do not think there ever were such advances. That was a secured claim and that was in favor of the Seaboard Steel & Manganese. The amount due unsecured creditors might be \$37,000. I do not know what percent was paid off.

I did not participate in the negotiations of Meyer for the stock in the Translux proposition. I do not know how much stock he acquired or how he acquired it. It was not my business and I did not ask. They started out with one and then later there was another because the company put stock in the market, but I think that was after he was out of it.

Q. Didn't you know there was a selling company and a holding company, and the one that had the patents, the original company and two others?

A. I would be surprised if that were true while he was there. [549]

Q. How long was he with that company, do you recall?

A. I don't know whether he had gone through with it before I went back to Cleveland in January, 1924 or not, but it would be somewhere near there, I would guess.

(Testimony of William R. Hopkins.)

I do not know whether Meyers was connected with the Translux proposition after it became profitable. Meyers never came to me and asked me to put money into it. I did not know that he was trying to raise money to finance the company.

Q. You say that Meyers always met his obligations promptly as far as you know?

A. He did.

Q. Do you know—calling your attention to Government's Exhibit 105, 106, 103, 104, 105 and 106, I will ask you if you knew Meyers could not, during the period of 1920, I think it is on those letters,—pay these obligations? Have you ever seen that letter before?

A. No, I had no occasion to see it.

Q. Did you ever hear about it? A. How?

Q. Did you ever hear of it?

A. No. I don't know anything about that. There was no reason why I should.

He always paid every obligation I knew anything about.

Meyers position in these business deals was to combine all the elements necessary to make a success of something that required a lot of different things to make it a success.

Q. Do you know whether or not he made any money out of this Translux?

A. Well, I would be surprised if he didn't.

Q. Do you know whether he did or not? That is my question, sir?

A. Not as a matter of certainty, I do not.

(Testimony of William R. Hopkins.)

Q. Do you know of any project while you were associated [550] with him on which he made any money, except his salary as you have mentioned?

A. Not of my personal knowledge. I know he was always spending a lot of money on this 'Translux. They had a period there where they had to operate a machine shop and build machinery, and they tried test after another. It was a terribly expensive business, and it would be very right for him to ask John Troeger to wait, if they had payrolls to meet and material bills to meet, and so on.

I understood that Meyers was financing the Troeger deal with his own money. Later on he did get other men. He must have put up a lot of money on Troeger before he got any from anybody else. That is my experience. He spoke of the amount of money he was having to put in to keep the machine shop operation going.

In all these cases somebody has to risk his money until the rich man thinks there is no risk any more. There must have been a period like that here, and my recollection is that there was, but I am not certain.

In the subway promotion, I was the promoter. He was the financial agent then. He was not a promoter there at all. Promotion is getting together the essential elements and supplying the necessary money to get the thing to the place where people who have money and don't intend to take risks will put in.

(Testimony of William R. Hopkins.)

I cannot say that I know that Greenhut came in on a certain day. I was close to the whole thing, but I did not see Greenhut's check. Meyers told me he put in money. He did not tell me how much. He told me the heavy drain it was on him. I remember his telling me about the terrible expense of that machine shop operation over in Brooklyn.

He was the man that made it good from the beginning [551] up to the place where careful fellows like Ben Greenhut and Percy Ferber would put money in. I did not know that he had 51% of the stock in that corporation. I had nothing to do with his corporate arrangements. I know about the struggle they went through to make this thing commercial because I helped him. I helped him to get money. I helped him to get Jarvis and I worked with them on the project, but that was all just a matter of goodwill. That was the technical mechanical aspect.

Q. In other words, you only know what you have been told, is that right? You were not involved in the corporation? You didn't attend the meetings, and didn't make any of the financial arrangements?

A. That is right. I had nothing to do with his corporation.

Q. You didn't see the checks issued by anybody who paid for them?

A. No, I didn't.

I became disassociated with Meyers in January, 1924. I had had no business association with him

(Testimony of William R. Hopkins.)

except in the United States Manganese and Seaboard Steel companies. There were really only two in which I was associated with him. I employed him to raise that money if he could on a definite commission basis. I went with him as a member of the syndicate from beginning to end. First, the United States Manganese, second the Seaboard and third the Union Manganese.

The Union Manganese, as I told you, was the company which operated first down on the Norfolk and Western, mining an ore which carried a high manganese content. I think Meyers, I and Mooney owned stock in Union Manganese. We had to pay Mooney, who was on the job, but I do not think Meyers or I drew any salary. The company was wound [552] up. I cannot tell you how. I do not think it was a receivership. I doubt whether we did more than get our money back.

I do not remember whether Meyers ever told me that he was responsible for building the Golden Gate Bridge. In my opinion there would not have been any bridge when there was if he had not done all the work he did. I do not recall his saying so, but he wrote to me and told me enough so that it has always been **my opinion** that he was responsible for the building. I am sure Strauss told me that Meyers was. Strauss told me that twice. I do not think that Meyers did.

I did not know anything about the Peoples Gas and Oil Company deal. I knew nothing about the representations that were being made here about

(Testimony of William R. Hopkins.)

Meyers. I do not know he was interested in the Cascades Tunnel.

Re-Direct Examination

By Mr. Simon:

I said that I had agreed with defendant Meyers that if he introduced me to people in New York who would finance the Cleveland subway project I would pay him five percent of the cost of the project. We were seeking to get \$7,500,000.00. His commission would have been \$375,000.00. There was no written contract, but there was no question about it.

Of the bonds of Seaboard Steel, Mr. Bush told me the directors were buying back the bonds. He told me at one time that they had bought back \$165,000 of the \$250,000 and were expecting to buy more.

Regarding the San Francisco-Oakland Bridge, I started to say, under a misapprehension, that the former Army officer, Frank Webb, brought into the office one day a big roll of blueprints. They were plans of a bridge [553] for which he either had a permit from the War Department, or was certain he would have it. I went into it carefully with him and whenever I saw Meyers afterwards he told me how they were getting along. I told him from the beginning that the railroads would make it impossible for him. I know nothing about what he did regarding the organization of a company and attempting to secure a franchise from the Board of Supervisors, except what he told and wrote

(Testimony of William R. Hopkins.)

to me about it. He got the permit. If Webb didn't have the permit right away, he got it pretty soon. I did not see it. I know his company employed General Goethals as engineer. I do not recall whether he went out to San Francisco before 1925. [554]

FREDERICK L. ESOLA,

A witness on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I live in San Francisco and have lived there most of my life. I was at one time Special Agent in charge of the Department of Justice and then I was made United States Marshal, I think in March, 1924, for Northern California. I held the position about ten years. I was on the State Parole Board and served my full term. I own a ranch down in the Santa Clara Valley.

I know defendant, H. Harry Meyers. I met him, I believe in 1925. I became acquainted in New York with Harry Applebaum, an attorney, at that time Secretary to Congressman, "Big Tim" Sullivan. I received a wire from him in 1925 that he was coming to California and I met him at the Whitcomb Hotel. Through him I met Meyers. Applebaum arranged to introduce me. I understood that Applebaum was out here to assist Dr. Meyers in connection with this bridge project.

(Testimony of Frederick L. Esola.)

That was the Oakland bridge. I knew Congressman Sullivan quite well.

I think in a great measure Meyers was really responsible for the building of the Golden Gate Bridge. I had Mr. Meyers meet Tom Finn, at that time the great political power in the San Francisco Bay Area. I believe Finn was sheriff and had an insurance business at that time. He had great influence with the Board of Supervisors. I can't go beyond that. [555]

Meyers had a lot of meetings with the various members of the Board of Supervisors and did a lot of entertaining around the Palace Hotel.

I am familiar with the reputation of Dr. Meyers in the City of San Francisco as to being an honest and law-abiding citizen, and for being a man of truth and veracity. That reputation was very good.

Cross Examination

By Mr. Hile:

Meyers in general conversation at the Palace Hotel spoke of the Golden Gate Bridge. I was never present at any public meeting where he spoke. I was never present at any meeting of the Board of Supervisors where he appeared and do not know what transpired there. I do not know whether he ever employed anybody to do anything in reference to the bridge. Of my own knowledge I do not know what arrangements defendant Meyers made with Mr. Finn. [556]

CARRIE E. DAVIS,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I live at 4007 West Carlson Street, Seattle.

I purchased leases of the Peoples Gas and Oil Company in 1935. I went to public meetings prior to the purchase and after it went into the receiver's hands. These were held in the Eagles Building in Seattle.

I saw defendant H. Harry Meyers on three occasions. I heard him speak on those occasions. I heard Broome introduce him. Broome did not say anything concerning Meyers' wealth to my knowledge. I did not hear him fix the amount that Meyers was worth. He said Meyers was one man we could depend on and what he said he would do he would do. He was going to finish that hole. He was going to put the drilling of that hole through so that we could get oil if there was any. He would do the drilling himself, as I understood it.

I did not understand it was a gamble. We all took it as a speculation. They told us they thought it was a good speculation if we could afford to invest in it. It was up to us to do so, but if we did not have the money and were not willing to speculate to stay out.

Q. And by "speculation" will you say whether or not you understood you were taking a chance on whether there was oil there or not?

(Testimony of Carrie E. Davis.)

A. I was taking a chance, and, furthermore, I was convinced that there was oil there, from other sources that I had seen. Meyers was to put that hole through so we could get oil if there was any. [557] I never heard the statement that if we did not take the speculation we ought to have our heads examined. Not to my knowledge did Broome say anything about buying Christmas presents. The only way we would know if there was oil was when the drill went through.

I put my money in on a basis of a speculation and felt that the representations that were made were carried out by Meyers.

Cross Examination .

By Mr. Hile:

I bought two and half acres of leases from Mrs. Marshall, a saleslady. She told me the company had very good men behind it. She thought Mr. Meyers was our main standby. We learned he was going to put the hole through as far as the money was concerned.

Q. Did she say how this money was going to be furnished, from where; what the source of it was? A. By selling leases.

Q. She told you it was going to be from selling leases? A. That was my impression.

Q. Did you hear that at the meetings that you attended, that they were furnishing the money from the sale of leases? Was that your understanding from what you heard at the meetings?

A. Yes.

(Testimony of Carrie E. Davis.)

Q. That the money was coming from the leases?

A. Yes.

Q. Now, when was that that they told you that?

A. About May, 1935.

Q. And after that did you hear it said that no part of the leases was being paid, that Dr. Meyers was supplying all the money himself? [558]

A. No, I didn't.

Q. That none of this money that was being collected from the people was being used for drilling?

A. Never heard that.

Q. Never heard that at all. He was financing it personally out of his own funds? Didn't you hear that?

A. No.

I did not hear that he was going to drill to China if he had to. I only understood that he was going to drill one well. Broome never said that if they got a dry hole they would drill another before they could prove the structure. He did say they had gas showings, but had unexpectedly struck basalt.

I understood that Meyers was the instigator of the Golden Gate Bridge; that he was a contact man, never heard anything about engineering.

I think we all expected the well to be a gusher. That is the way an oil well comes in, isn't it? That is my impression. I got that impression from the meetings that it would be a gusher.

Q. Well, did you know that Dr. Meyers quit drilling this well in October, 1936? Do you know that he quit drilling it himself?

(Testimony of Carrie E. Davis.)

A. Not that I know of.

Q. And did you know that thereafter he never did drill the well? Were you informed of that?

A. No.

I never heard him say he was a philanthropist.

Meyers' interest was going for the people so that they would get their money out of it.

I remember Broome showing pictures of different wells and places. I never heard Broome say he was a geologist. He [559] was a petroleum engineer. I don't remember reading in the literature that he was a geologist. I could not say that he said anything about his advisory board. I did not know what dividends were paid by the company that sold the leases. I did not know anything about any agreements they had before coming up here. My understanding was that Dr. Meyers was connected with only one company. They never told us that he was connected with all the other companies. I did not know that they had entered into an agreement in which they said that the purpose of the drilling company was to create as much public interest as possible and to supply the selling company with all selling material possible.

We certainly believed Dr. Meyers when he said he would finish this well. I certainly would not have put my money into it except for understanding that it was adequately financed. I never talked to Dr. Meyers about why he did not finish the well. They took the machinery away from him is the reason he did not drill any more. I do not know

(Testimony of Carrie E. Davis.)

what date it went into the receiver's hands, and they took the machinery away. I did not know that the receiver had asked Dr. Meyers to go ahead and drill.

Re-Direct Examination

By Mr. Johnson:

It would not have made any difference if I had known that all were to have an equal share in the stock of the Peoples Gas and Oil Company. I know they stopped drilling after the receiver was appointed. I know also that the machinery was taken away and Dr. Meyers did not have an opportunity to get that machinery. In view of those circumstances I feel that he fulfilled the obligation he made as far as I was concerned.

Meyers never represented himself to be a physician and surgeon that I know of, and no one ever said, in my [560] presence that he was an engineer or chief engineer on the bridge.

Recross Examination

By Mr. Hile:

When I invested my money I did not think about Dr. Meyers. I was anxious to see Washington develop and that was our biggest development at the time. I did it because I thought he was going to finish the well and he would have finished it if he had had a chance.

Re-Redirect Examination

By Mr. Johnson:

I knew drilling was going on up to the time the

(Testimony of Carrie E. Davis.)

receiver took it and that drilling was highly satisfactory to me. [561]

CALISTA STERNS,

A witness called on behalf of defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I live in Seattle. I purchased some leases from the Peoples Gas and Oil Company. I had lived in Los Angeles, and had been around oil wells quite a bit and had some stock in them.

I attended a good many of those meetings. I saw Dr. Meyers twice. Once I was sick when he was there, but I saw and heard him twice. I never heard Broome or Meyers make any reference to how much money he had. He never made any brags about being a millionaire or a multi-millionaire. He said he was backing the drilling association. They were going to try to see that the well was drilled until they either found oil, or were going to about 7000 feet.

I never heard about Meyers being the engineer or chief engineer of the Golden Gate Bridge.

At the meetings I heard that Meyers was the instigator of the bridge, a kind of a contact man, that he got legislation through in order to put the bridge through. I never heard that he built the bridge.

(Testimony of Calista Sterns.)

I heard them say a great many times that it was a speculation and if anyone could not afford it, they did not want them to put their money into it. I heard nothing about having our heads examined.

They emphasized it was a speculation and that was the basis I put money in. I had speculated in California where we put in money in holes that came in dry. You can't tell if there is oil until the bit goes through. I believe Meyers would have finished the well if it hadn't been thrown into [562] receivership and all their machinery stolen.

Cross Examination

By Mr. Hile:

Broome spoke a good many times at the meetings, J. F. Simons very seldom. I never heard Bill Markowitz. I have seen him a great many times, but he never talked. Meyers was there only a couple of times that I saw him. I was sick at one other time. Fisher was there. I do not remember Christensen. I had a little over 20 acres. I picked up one or two other leases from other peoples. I am a widow. I went to meetings both before and after I bought. We were not after who the men were. We were looking for a good speculation so we could invest our money so we could have returns from it. That was all we were thinking about, trying to put the State of Washington on the map as an oil state, trying to develop the state.

(Testimony of Calista Sterns.)

Q. That is right. And at these meetings did Broome or Fisher or somebody tell you that it was a speculation, but with the men——

A. (Interrupting): No, sir.

Q. ——back of it, the machinery——

A. (Interrupting): We were supposed to be speculators.

Q. Well, you didn't let me finish my question.

A. I beg your pardon.

Q. Didn't they say that while there was a speculation about it all right, but with the men we have, the finances we have and the machinery we have, this will be given a thorough and adequate test? Do you remember that in effect, maybe not the exact words? A. Well,——

Q. But they were going to give it a thorough test? A. They were. [563]

Q. And with the machinery we have, which you saw? A. Yes.

Q. And with Dr. Meyers back of it to finish the drilling? Is that right? A. Yes.

Q. Didn't they talk about the geology they had on the picture over there? A. Yes, sir.

Q. About their advisory board?

A. Yes, sir.

Q. Who had fairly geologized the structure?

A. I had known of that.

Q. With the men, the money and the machinery, they were going to reduce that down to an utter minimum, as far as possible, the speculation aspect of it? A. I don't know about that.

(Testimony of Calista Sterns.)

Q. That was what they said anyway, wasn't it; that they had the men, the money and the machinery and that they were going to give it a thorough and adequate test? Isn't that right?

A. They said they were going to drill or try to go to a distance of 7000 feet. That was their estimate. I did not hear whether they were going to drill more than one well. I know they said they had gas showings over there, showings of gas that came from oil.

Q. Did they say anything about Dr. Meyers being responsible for the Golden Gate Bridge.

A. They said that he had been the instigator of it.

Q. Well, I just wanted you to amplify it. I don't know what you mean by the word "instigator".

A. Well, he made contacts and got legislation to get the bridge through. I heard that a number of times in California and here too. [564]

Q. You heard it from the public platform or at the public meetings? A. Yes.

Q. Did he say that he was responsible for getting the act passed, the enabling act to build the bridges?

A. I heard that, that is all I can tell you.

I used to read the "Peoples Progress" and some of the newspaper articles that came out.

Broome never claimed to be a geologist.

I heard Broome make the statement on the witness stand that he was only a petroleum engineer.

Broome said he worked in oil fields in California. He did not say he had worked in Tampico, Mexico,

(Testimony of Calista Sterns.)

but a friend, McKim Hollins, who brought in the field.

As I said I do not know anything about Dr. Meyers quitting drilling on October 15, 1936, the receivership being October 22, 1937.

I have heard on the side and once or twice on the platform, that Dr. Meyers was a philanthropist.

Nothing was said about Dr. Meyers' wealth by anyone, they only said he was backing it. Meyers was a very mild, unassuming man.

Nothing was said about what was to be done with the money derived from the sale of leases. I did not hear that the lease money was to be used for drilling. Our impression was that Dr. Meyers quit drilling because of the receivership. He couldn't drill without machinery.

Re-direct Examination

By Mr. Johnson:

I had learned in California, that Meyers had some connection with the bridge, that was in San Francisco.

Q. (By Mr. Johnson): Did you ever hear Mr. Broome [565] make any statement about what he knew about the geology of Eastern Washington?

A. Well, he had gone over the ground himself, in order to make sure just what this geology was, and he had some of his friends who were geologists come up here and go over it with him so as to be sure that the geology was right.

Q. Did he mention who those people were?

(Testimony of Calista Sterns.)

A. Well, he had Ward Blodget and Ralph Arnold, I believe.

I could not recall the names of others. I know that Broome spent considerable time and some of his own funds on the enterprise before it was open to the public.

Recross Examination

By Mr. Hile:

I think Broome said that Blodget and Arnold had been up here after he had looked over the structure. He had gone over the structure and made a study of it himself.

Q. Then he had gotten their conclusions?

A. Afterwards.

Q. Afterwards? A. Yes, sir.

Q. With reference to when now? I am trying to fix the time now as to whether this was after——

A. (Interrupting): Before they started drilling operations over there.

Q. Before they started drilling operations?

A. Yes.

Re-direct Examination

By Mr. Johnson:

Broome stated that he had talked with Mr. Roberts and had his opinion before he started drilling. I do not remember McKim Hollins exactly. I know he had three or four that came [566] up so as to confer with him in regard to what he had found and they had verified his statements. I think he had consulted Mr. Blodget before he started drilling.

(Testimony of Calista Sterns.)

Re-cross Examination

By Mr. Hile:

I think he said there was a three-man geological Board. [567]

M. G. TENNENT,

A witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

My name is M. G. Tennent and I am in the foundry business. I was Mayor of the City of Tacoma for the years 1926 to 1929 and 1930 to 1934.

I know defendant, Harry Meyers. I first met him in 1926 or 1927 when he started promoting the Narrows Bridge, the advisability of building the bridge and the design. He later called on me in Tacoma. Mr. Strauss was with him at that time. We discussed the bridge most of one afternoon, and visited the site. The definite dates are not clear in my mind. It was somewhere between 1926 and 1929. I met Strauss only once. He said he was going to study the matter and that Meyers would get in touch with me later, that Meyers would represent him in the contact with me. Strauss said Meyers was active in the Golden Gate Bridge.

I remember conversations with Mr. Meyers. He contacted me as promoter of the bridge. He had some communications from Mr. Strauss relative to the bridge, asking for additional information. De-

(Testimony of M. G. Tennent.)

defendant's A-179 I am positive I have seen before. I think I attended the meeting where that letter was presented. I would not swear that that was the signature of Mr. Strauss. Exhibit A-179 admitted.

I would not say how many times Meyers called on me after this meeting with him and Mr. Strauss. Every time he came to Tacoma he saw me or I went up to the hotel and talked [568] with him. He discussed the tunnel through the Cascades, but not when Mr. Strauss was here. We attended a Cascade Tunnel meeting at one time in Seattle at the Olympic Hotel.

No Cross Examination. [569]

MRS. LEOTA MEYERS,

A witness called on behalf of the defendant, after being first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

My name is Leota Meyers. I am wife of defendant, H. Harry Meyers. I was born in Washington, Iowa and lived in Tacoma from the time I was four years old until I was fourteen or fifteen.

I first met Mr. Meyers in London, England in 1912. We were married March 19, 1925, in New York City. I often entertained in our home in

(Testimony of Mrs. Leota Meyers.)

New York English friends of my husband's. I do not recall outstanding people particularly. Sir Der-rick Warner visited our home and Sir Thomas Lip-ton, when he came over to the yacht races. I was on his yacht during the yacht races. And many other friends he had from England.

Mr. Meyers made a marriage settlement on me when we were married. I would say quite a large settlement—well it was almost \$250,000. He told me to put it in cash. He was always explaining to me why he wanted money in cash. He wanted to keep it in cash because I had many times thought it foolish to keep so much cash. I did accede to his suggestion many times, but after awhile I felt that it was his money and as long as he wanted it that way that was the way it should be.

I moved to Los Angeles to live permanently I think in 1928. We came out first to San Francisco on that bridge there in 1925, after we returned from Europe, and it was two years later that I decided to remain in Los Angeles. The trip to Europe was both a pleasure trip and business [570] trip. Mr. Meyers had some business in Prague, Czechoslo-vakia that he was looking into and it happened that we were married at that time so it was both business and pleasure. He may have had business in other places, I do not know. I did not pay much attention to his business. He always said I did not understand about it. I think the enterprise in Prague had something to do with making pottery and china, and crockery.

(Testimony of Mrs. Leota Meyers.)

In the spring of 1934 my husband told me of coming up to the State of Washington, on an oil proposition. At first I disapproved very much. In the first place I was not in very good health at the time and he had been away working on the San Francisco bridge so long that I naturally objected. I felt that we were in very comfortable circumstances and could live comfortably the rest of our life, and I felt I did not want him to be interested in anything more, particularly anything that would take him away from Southern California.

Usually my husband had a great deal of money with him, I mean checks, and so on, but whenever he needed any he would usually tell me to make deposits or send him cashier's checks, which I have done many times. He would tell me the amount he wanted and I would put it to his credit and send him the cashier's checks. I would get the money from the safety deposit box.

In 1934 we had a deposit box in the Union Bank in Los Angeles and one in the Bank of America, the 6th and Adalexandria Branch. We had several hundred thousand dollars in currency in the spring of 1934. I would say around \$400,000, probably.

I objected seriously when I saw he was spending so much money. On one trip down he told me that any time he [571] needed money he would have to have it and he would tell me when he needed it and I was to *sent* it to him. Several times he told me to take money out of the safety deposit

(Testimony of Mrs. Leota Meyers.)

box. There were two people I was instructed to give money to. One was Milton Black, his attorney and the other one, Mr. William Markowitz. I knew Mr. Milton Black very well, probably five or six years. He was in the District Attorney's office before he went into private practice and became connected with the firm of Judge Pacht, Patten, Warren & Black.

Several times I would give Mr. Black \$5,000 or \$10,000, but it was all returned. I also gave Mr. Markowitz probably \$20,000 which was returned.

Cross Examination

By Mr. Hile:

Mr. Meyers gave me a marriage settlement of \$250,000 in cash in 1925. It was really in 1924. We were married early in 1925. There was no written agreement. We had known each other for nine years before we were married and I do not know especially why he gave it to me. I had probably between \$75,000 and \$100,000 of my own. I never asked him where he got his money.

I never did know really very much about his business. He was in the medical business. He has never discussed his business with me much since we were married. I know very little about his business affairs. When he came up here I would say we had around \$400,000 in a safety deposit box. I know nothing about the contract with Markowitz and Simons.

I could not say when I first started to take money

(Testimony of Mrs. Leota Meyers.)

out of the deposit box, to send up here in cashier's checks or how much I took out and sent. [572]

It was many thousand dollars, probably \$100,000 or more. I cannot answer how much more. I cannot give you the total of the payments to Markowitz and Black. It must have been around 1934 or 1935. He did not say why I was to give money to them.

Mr. Meyers knew Mr. Roth well. He never went with me to the bank.

In 1934, I would say in addition to the cash, I personally had about \$10,000 in government bonds. I could not tell you how much I had in bonds about 1935. I do not know. I never owned any real estate. Mr. Meyers never owned any real estate. He never told me whether he was making any money in this oil venture. I never talked business to him when he came home.

When he was away he would ask me to send him a cashier's check and I would send him that. If he would say to deposit it to my account I would deposit it. I did not know that the receiver was appointed or when he was appointed.

Dr. Meyers did not give me the whole of the \$250,000 at one time. It was over a period of several months. I think he gave me some cash and some gold. [573]

NAT SCHMULOWITZ,

a witness called on behalf of defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am an attorney of law in California. I have been practicing since the summer of 1911. My office is in San Francisco.

I first met Mr. Meyers in my office prior to the spring of 1926. He was a frequent visitor to the office of the late Gavin McNab. My personal office was next to Mr. McNab's, and I used to meet Meyers quite frequently. In a general way I knew the nature of the association between Meyers and McNab. I think Mr. McNab was looked upon as one of the outstanding civic leaders of San Francisco, and a lawyer of great ability and prominence. He was selected by President Wilson on a commission to investigate the aircraft mechanics. He was Western Representative of the Alien Property Custodian in a large number of matters. He never held any elective office. He served on a large number of civic committees appointed by both the President, the Governor and the Mayor. He was selected invariably as the San Francisco representative to meet higher dignitaries and ministers-plentipotentiary who arrived in San Francisco at the San Francisco Port during the progress of the First World War and for a number of years thereafter. He was the representative to the State Department on such occasions. I remember particularly that

(Testimony of Nat Schmulowitz.)

he was the representative of the State Department on the occasion of the visit of the King of Belgium, so acting at the request, as I recall it, of Breckenridge Long, then one of the Under-Secretaries of the Department of State. [574]

I know that McNab assisted the defendant, Meyers, in his attempt to arouse public interest in the Trans-Bay project. I know that McNab had frequent conferences with Meyers and with public officials.

About 1934 our firm was retained by Dr. Meyers in connection with a controversy he had with Joseph B. Strauss. I and George Harris conducted the discussion between our firm and counsel for Mr. Strauss. I recognize defendant's A-180 as a document drafted after negotiations between ourselves and the attorney for Mr. Strauss. The instrument is an agreement of an adjustment between Mr. Strauss and Mr. Meyers for services that had been rendered by Mr. Meyers to Mr. Strauss over a period of years, there having been some differences between Mr. Meyers and Mr. Strauss with respect to the arithmetic that would be involved, Mr. Strauss claiming credits which Mr. Meyers disputed, and this agreement was designed to resolve their respective contentions concerning those credits.

The only question raised by Mr. Strauss was as to the arithmetic computations of Meyers claim against Strauss and there was no denial but that Meyers had fully performed the agreed services for which he was claiming the balance due him.

(Testimony of Nat Schmulowitz.)

I am familiar with the general reputation of defendant Meyers in San Francisco as to honesty and being a law-abiding citizen, and as to truth and veracity. I would say it was very good.

Mr. Strauss defaulted in making all of the payments provided for in the contract, Exhibit A-180, and we were reemployed, I believe in 1937, to enforce the provisions. We entered a second suit for the delinquent payments. [575]

Cross Examination

By Mr. Hile:

With respect to Exhibit A-56 dated March 11, 1939, I have a copy in my file. Also of A-57 and A-58. I do not believe that Exhibit A-58 was drawn up in our office. I think it was drawn by Strauss himself.

I am unable to state whether an answer was filed to the complaint in behalf of Meyers. We tried to get Mr. Strauss into our office on a subpoena for a deposition, but he evaded service and never came in. I never talked to Mr. Strauss about this matter in my office.

Relative to the Transbay Bridge, I observed an activity that resulted in public announcements concerning the promotion of a bay bridge, after Meyers arrived. I had conversations with Meyers about his activities. There was a great deal more publicity at the time Meyers was there and I associated the newspaper comment with Meyers' activity. I do not know whether or not his name was mentioned in these articles. [576]

GEORGE B. HARRIS,

a witness on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I am a judge of the Municipal Court of the City and County of San Francisco. The court has general jurisdiction. I was appointed to the office on July 8, 1941.

I practiced law in San Francisco a good many years previously. I was admitted to the bar, I think in 1926, and during that time I was associated with the witness who just testified. (Nat Schmulowitz)

I know defendant Meyers. I met him in the year 1934 in connection with a litigation on his behalf against Joseph Strauss. Mr. Schmulowitz invited me into the controversy, as Meyers had requested a conference. Meyers presented several papers and stated that payments under the documents were in default. Dr. Meyers had counterparts, as I recall, of exhibits A-56, A-57 and A-58. We had conferences with Strauss' attorney, Henry Claussen. I started suit for Meyers against Strauss. Defendant's A-180 is an agreement dated March 30, 1935 between Joseph Strauss and H. H. Meyers. I drafted this together with Henry Claussen. I recognize my signature there and the signature of Mr. Meyers. I do not recognize the signature of Mr. Strauss.

(Testimony of George B. Harris.)

DEFENDANT'S EXHIBIT No. A-180

AGREEMENT

This Agreement made and entered into this 30th day of March, 1935, by and between Joseph B. Strauss, hereinafter called first party, and H. H. Meyers, hereinafter called second party;

WITNESSETH

Whereas, second party has acted for the first party and the Strauss Engineering ^{Corporation} ~~Company~~ of Chicago for several years last past in the advancement of certain enterprises and projects and the furtherance of certain patents and patent rights; and

[Initials in margin]: H.C.C. G.B.M.

Whereas, differences and disputes have arisen between the parties hereto regarding respective amounts claimed to be owing by one party to the other, and further with respect to the mode and manner of payment of said amounts claimed to be due and payable and to hereafter become due and payable from first party to second party; and

Whereas, the parties hereto are desirous of forever and for all times settling said differences and reconciling the same; and

Whereas, there has been an accounting as between the parties hereto, and as a result of said accounting and determination the respective claims, counter-claims, contentions, and offsets of every

(Testimony of George B. Harris.)

kind and character have been considered on behalf of the respective parties and finally reconciled, and as a result thereof a full and complete determination has been arrived at with respect to the amount and/or amounts due and payable by first party to second party and to become due and payable by first party to second party as hereinafter more particularly set forth;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, It Is Mutually Understood and Agreed, as follows, to wit:

1. First party admits and acknowledges that the balance owing and payable to second party by first party is the sum of \$43,109.65, which said sum and balance as aforesaid is to be paid and discharged by first party to second party in the following mode and manner to wit:

On account of said balance of \$43,109.65 first party agrees to pay to second party fifteen percent (15%) of all future installment progress payments as, if and when received subsequent to this agreement by first party from the Golden Gate Bridge and Highway District, which said payments shall commence with the next ensuing progress payment received by first party;

The balance, after giving recognition to and deduction of the aforesaid percentage and/or pro rata payments payable to second party by first party from said installment progress payments to be received from said Golden Gate Bridge and

(Testimony of George B. Harris.)

Highway District, shall be paid and discharged by first party to second party out of the final payment of \$150,000.00 (the so-called retention fund to be paid the first party by said District, which said retention fund is more particularly referred to and provision made therefor in the contract by and between first party and said Golden Gate Bridge and Highway District, dated the 7th day of October, 1929, wherein it is expressly provided and conditioned that the said sum shall be payable to first party upon completion and acceptance of the Bridge according to plans and specifications) immediately upon the payment of said sum of \$150,000.00 to be paid to first party by said District; or, in the event the whole of said payment is anticipated or advanced by said District to first party for any cause or reason at any time prior to said completion and acceptance of the Bridge, the within agreement is to be operative upon said retention fund of \$150,000.00, and the whole of the balance then due and payable second party by first party shall immediately and forthwith be paid and disbursed to second party.

In the event that part of said retention fund in the sum of \$150,000.00 is anticipated, advanced or paid to first party prior to the completion and acceptance of the Golden Gate Bridge, the second party is to receive a pro rata of such payments in an amount based upon the proportion that the then balance due from first party to second party bears to the total retention fund of \$150,000.00.

(Testimony of George B. Harris.)

It is expressly understood and agreed, however, between the parties hereto that the payment of the aforesaid amount of \$43,109.65 by first party to second party is conditioned upon the receipt by first or on behalf of first party of the payments hereinabove and more particularly referred to from the said Golden Gate Bridge and Highway District.

[Initials in margin]: H.C.C. J. B. H.

2. It is expressly understood and agreed that it has been represented to second party and to his attorneys, Messrs. Nat Schmulowitz and George B. Harris, by and on behalf of first party, that said first party has not heretofore, nor will he hereafter, execute or cause to be executed any assignment, transfer, or any other documents, purporting to be an assignment or operating as an assignment, for the benefit of creditors or otherwise, in and with respect to the aforesaid retention fund and with respect to any and all future installment progress payments hereafter to be received by first party from said District which would operate or tend to operate to the prejudice or detriment of second party in and with respect to the payment of the obligation as hereinabove more particularly provided for; second party hereby declares that but for such representation as aforesaid by and on behalf of first party that he has not heretofore nor will he hereafter execute any assignment or purported assignment as aforesaid, in and with reference to the payments to be received from the said

(Testimony of George B. Harris.)

Golden Gate Bridge and Highway District, and/or retention fund, the second party would not have entered into the within agreement, and would perforce continue pressing to finality the civil suits hereinafter referred to, and such additional suits and litigation as might appear necessary and proper. In reliance upon and in consideration of the foregoing, nothing herein contained, however, shall in any manner be construed to be or to operate as a past, present, or future assignment to or for the benefit of second party.

3. Second party shall forthwith dismiss with prejudice the following actions now pending in the Superior and Municipal Courts of the City and County of San Francisco, State of California, as follows, to wit:

H. H. Meyers, Plaintiff, v. Joseph B. Strauss, Defendant, (Superior Court) No. 253475,

H. H. Meyers, Plaintiff, v. Joseph B. Strauss, Defendant, (Superior Court) No. 256844, and

H. B. Meyers, Plaintiff, v. Joseph B. Strauss, Defendant, (Municipal Court) No. 73127.

That concurrently with the execution of the within agreement by the parties hereto, second party agrees to deliver to first party dismissals of said actions, and each of them. It is agreed on the part of the first party that in consideration of said dis-

(Testimony of George B. Harris.)

missals, first party waives any and all liability or claimed liability as against second party, and as
and with respect to
against the surety and/or sureties on ^ the several attachment bonds filed in the aforesaid actions.

[Initials in margin]: H.C.C. G.B.H.

4. The sums herein agreed to be paid second party by first party may be paid through his attorney, Henry C. Clausen, to the attorneys of second party, to wit, Messrs. Nat Schmulowitz and George B. Harris, in the City and County of San Francisco, State of California, No. 625 Market Street, who are hereby and herewith authorized by second party to accept, receipt and discharge therefor.

5. It is mutually agreed that the amount which the first party has herein admitted and acknowledged to be and to become owing and payable to the second party shall be subject to a deduction in the amount of \$8500.00, or a greater amount as herein set forth, which includes reasonable attorney's fees and actual costs and legal expenses, in connection with an action hereinafter referred to as "E. Fleschler v. Joseph B. Strauss", which said deduction shall only be made out of the balance to be paid and discharged by the first party to the second party out of the payment of \$150,000.00, hereinabove referred to as the retention fund, and which said deduction shall only be made upon the following terms and conditions, and in the manner as hereinafter set forth, to wit:

(Testimony of George B. Harris.)

Out of the said balance, first party shall set aside as a reserve the said sum of \$8500.00, or larger sum as herein set forth, as and for the liability of first to be borne by second party
party ^ in and with reference to an action entitled "E. Fleschler v. Joseph B. Strauss" now pending on appeal from the Superior Court of the State of California, in and for the City and County of San Francisco, numbered therein 247819 in the records thereof, for the purpose of discharging and defraying the ultimate judgment, if any, obtained by the plaintiff therein, together with all reasonable attorney's fees and actual costs and legal expenses in connection therewith; in connection with said items of expense second party shall have the right to demand proof of and/or dispute the propriety thereof.

[Initials in margin]: H.C.C. G.B.H.

In the event said reserve item in the amount of \$8500.00 shall be insufficient to cover said liability, reasonable fees, costs and expenses, first party shall promptly notify second party or his attorneys herein mentioned and the deficiency, if any then appearing, shall be withheld by first party from the payments herein agreed to be made second out of the retention fund
party, ^ subject to the right and privilege on the part of second party to question the reasonableness of said items, or either, or any of them.

[Initials in margin]: H.C.C. G.B.H.

In the event the aforesaid litigation entitled "Fleschler v. Strauss" and numbered as aforesaid,

(Testimony of George B. Harris.)

shall ultimately and finally be determined in favor of or be settled by first party for an amount so that there is a balance remaining out of the said reserve, after deducting therefrom said reasonable fees, costs and expenses, said balance shall be forthwith paid to second party.

6. Subject to the terms, covenants and conditions hereof, and except as to the obligations herein created and contained and referred to, upon the execution hereof, any and all claims, demands or obligations, of any kind or character, legal or equitable, existing between first party and second party, or existing between second party and the Strauss Engineering Corporation, a corporation existing and organized under and by virtue of the laws of the State of Illinois, or existing between second party and any of the agents, servants or employees of first party, or existing between second party and any corporation in which first party is interested, or existing between second party and any corporation which is a subsidiary of first party or said Strauss Engineering Corporation, shall be deemed to have been fully settled and discharged and each of said parties shall be deemed to be free and clear of any and all claims, demands or obligations asserted by the one party against the other from the beginning of the world to the date hereof, and the purpose and intendment of the within provisions is to operate as a mutual release to the respective parties hereto, save and except as to the obligations herein claimed and admitted to be due and payable

(Testimony of George B. Harris.)

and more particularly referred to herein. This agreement confirms the cancelling of any and all agency or other rights of second party in and for any various projects whatsoever, in or concerning which first party and second party and the said released persons and corporations aforesaid, have been interested or connected with, and terminates and concludes forever any and all authority of second party in connection with any said projects.

7. Second party shall not, in any manner whatsoever, particularly by or through any discussion, communications or negotiations, cause any damage through or by any annoyance or interference to first party, with respect to the parties hereto, or their respective past, present or future undertakings or employments, or otherwise. Conditioned, however, that the foregoing shall not serve as or otherwise be construed as a limitation, abridgment or restriction upon second party to enforce the provisions of the within agreement, all and singular, in the event of a breach or threatened breach of the within agreement, by such means as may be expedient; and in the event of such breach or threatened breach by first party of any of the terms, covenants and conditions of the within agreement, said second party shall be free to enter into such discussions, negotiations and/or communications as may appear to be necessary and proper for and on behalf of said second party with respect to the enforcement, by legal or extra-judicial means, of all

(Testimony of George B. Harris.)

and singular the obligations, covenants nad conditions of first party.

[Initials in margin]: H.C.C. G.B.H.

8. It is further understood and agreed that the within agreement shall supersede any and all agreements and/or accounts that may have been heretofore entered into and agreed upon as between the parties hereto. The purpose and intent of the parties hereto is to settle and adjust for all times all of the mutual claims of the parties hereto one as against the other.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

JOSEPH B. STRAUSS

First Party

H. H. MEYERS

Second Party

HENRY C. CLAUSEN

Approved for First Party

NAT SCMULOWITZ

GEORGE B. HARRIS

Approved for Second Party

(Copy)

[Endorsed]: Filed Nov. 3, 1942.

There was never any question about the liability of Mr. Strauss. It is just a question of accounting. Mr. Strauss claimed certain set-offs and that

(Testimony of George B. Harris.)

certain money should be withheld pending the completion of the [577] bridge. After several months of conferences and dilatory conduct we entered into that agreement. It provides, I think, for the payment of \$43,109.

Payments were made on the agreement of approximately \$13,000. In addition \$29,500 was earmarked by Strauss to the Wells-Fargo Bank as a trust fund, pending certain obligations which he claimed he might have as a result of the ultimate completion of the bridge.

It was in 1937 after making demands on Strauss that we were obliged to institute another suit to preserve the rights of Dr. Meyers, since it appeared that Strauss had defaulted and we also desired to preserve our rights under that trust. I think thereafter Mr. Strauss passed away and a claim was filed against his estate. I do not know of my own knowledge as to whether or not the claim was paid.

Cross Examination

By Mr. Hile:

My best recollection is that answers were never filed to the complaints. There were three suits.

Defendant's A-56 provides that payments were to be made "conditionally upon my appointment as engineer of the bridge". Strauss was appointed so there was no question raised on that point.

Exhibit 281 is a copy of the complaint filed 1934 against Strauss. Exhibit 282 is a copy of the complaint filed in November 1937 against Strauss.

(Testimony of George B. Harris.)

There were three suits filed. I have copy of only one. It was not necessary to make any allegations that Meyers had performed any services at all, there being an account stated and the balance due. There was no occasion, as a matter of pleading to question the services rendered. [578]

Redirect Examination

By Mr. Johnson:

There was never any claim made by Strauss that Meyers had not performed the services. [579]

EDGAR S. SNIDER,

recalled on behalf of the Defendant, having been previously sworn, testified as follows:

Direct Examination

By Mr. Simon:

I found in my files two copies of reports by Dr. Marcel Daley. There was another one which I did not have, and that report that Dr. Daley showed me which he had sent to Rufus Dawes and his brother Charles Dawes of the oil company at Marietta, Ohio. Defendant's Exhibits A-181 and A-182 are copies of the report. Defendant's Exhibit A-183 is a copy of the list of people who attended the dinner at the Washington Athletic Club.

Cross Examination

By Mr. Hile:

I discussed the report with Dr. Meyers before 1930 or 1931. I met him about 1925 or 1926 in

(Testimony of Edgar C. Snider.)

Seattle, about or before the time of the organization of the Cascade Tunnel Association. At that time he said he was in a fight with the Southern Pacific Railway and other interests over a bridge project. I think when I first talked with him it was about the Oakland Bay Bridge, rather than the Golden Gate Bridge. He told me afterwards of a district that was forming, and suggested we might do something similar with the proposed Cascade Tunnel. I do not know whether the district I am talking about was with reference to the Oakland Bridge or the Golden Gate Bridge.

The meeting at the Washington Athletic Club was July 14, 1933. [580]

GEORGE B. HARRIS,

recalled on behalf of the defendant, having been previously sworn, testified as follows:

Direct Examination

By Mr. Johnson:

I know Louis Lurie of San Francisco. He is a capitalist and civic leader. I received a telephone call Sunday morning, last, advising that he had had a recurrence of a heart illness and he said it would be extremely difficult for him to make the trip up here.

Cross Examination

By Mr. Hile:

I did not see him myself. I just know what he told me. [581]

ISAAC PACT,

a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I reside at Los Angeles and have been there a little over thirty years. In private life I am a lawyer, in public life I am Chairman of the California State Board of Prison Directors. I have been a member of the Bar since January, 1913. From 1931 to 1935 I was Director of the Superior Court of the State of California and a part of that time was a Judge sitting in the Appellate Court. I knew in his lifetime, Milton M. Black, from the time I was Judge in the Superior Court. He was one of the young deputies the District Attorney assigned to my court when I was sitting in the criminal division. He occupied the position of Deputy District Attorney during the years 1934 and 1935. I resigned from the Bench effective December 1, 1935 and went into private practice and Milton M. Black became associated as junior member of the firm, Pact, Turnbull, Pelton, Warren & Warren.

I know the defendant, H. Harry Meyers. I have known him about seven years. I am acquainted with his reputation in Los Angeles as being an honest and law abiding citizen. That reputation is excellent. His reputation for truth and veracity is good.

(Testimony of Isaac Pacht.)

Cross Examination

By Mr. Hile:

I know nothing of the facts in this case except as I have heard things from Dr. Meyers. My firm represented Meyers in 1937 and possibly 1938. [582]

Mr. Black was a county officer, similar to your Prosecuting Attorney.

I know nothing about Mr. Black receiving proceeds from the corporations which were organized up here in this gas and oil deal. I did not hear this case discussed particularly among my acquaintances in Los Angeles. When Dr. Meyers was indicted I think there was some newspaper publicity about it. He has lived in Los Angeles as far as I know all the time I have known him.

Redirect Examination

By Mr. Hile:

Mr. Black died in February of this year.

Recross Examination

By Mr. Hile:

Mr. Black at all times lived in Los Angeles while I knew him. After the indictment there was a discussion between Mr. Meyers and Mr. Black in the office. I have heard discussions about Mr. Black being a stockholder in some of these enterprises, either for himself or as trustee, but it was not a matter to which I gave any particular attention.

[583]

H. HARRY MEYERS,

the defendant, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Simon:

I am the defendant on trial.

I was born at Goshen, Indiana in 1875, and will be 68 years old my next birthday. I have never been convicted of a crime and have never been charged in an indictment until this case was brought.

I had very little formal education. As a youth I worked in a drugstore and different places. The city of Elkhart was ten miles away. It had established a great reputation for preparatory medicaments—Dr. Miles' Nervine, H. E. Buckman's Arnica Salve and White's chewing gum. I became interested. I worked in a drugstore and other stores. I joined a circus and sold popcorn and lemonade. At sixteen or seventeen I was in Chicago, and knowing a bit about preparatory medicaments I got acquainted with a man by the name of James Raney, who owned the Vitalene Company, making a stomach cure, an active pill. I have a small interest in that company. I stayed with that company until I was 21 years old.

I lost quite a bit of money in the wheat market for a young man, and a man named Tom De Nune induced me to come out to Wyoming. He had a company in Denver making a preparation called Antiflogestine. I went to England to market it, but was advised that if I tried it I would be enjoined,

(Testimony of H. Harry Meyers.)

so I worked out another preparation no different, but called "Mother's Poultice" and started a company called the British Organo Therapy and operated it about three and half years. I introduced a lymph and serum preparation dis- [584] covered by a Joplin, Missouri man named Hawley who had brought it to the attention of Dr. Lowenthal, head of the Kankakee, Illinois Insane Asylum. I sold out and made about 50,000 pounds, or \$250,000 out of it.

I have never told anybody that I was a physician and surgeon and did not write that on my signature card admitted in evidence. (As testified by Mr. Oldfin of the Pacific National Bank). I never had any medical training except selling pills.

I became acquainted with a man named Arthur Silver, one of the best organizers in England. I went with him to Portugal and helped him build the municipality housing in Lisbon. I made about 20,000 pounds, or \$100,000.00 out of that. I was then 26 or 27 years old.

Mr. Silver introduced me to Sir Arthur White, head of Kent Collieries, Ltd., and a big financial man, and to Baron Lichtenstadt, an investment banker, who represented a great deal of foreign capital and had a tremendous following. He wanted a confidential man to investigate for him enterprises he wanted to go into. I went to work for him and remained with him between 1908 and 1909, something like that.

The work carried me to most parts of the world.

(Testimony of H. Harry Meyers.)

I spent a great deal of time in America. The Baron was very much interested in Canada and when Sir William McKenzie and Sir Donald Mann were building the northern railroad in Canada he had a lot of securities backed by the Dominion of Canada. I was in South Africa and in India for him and 18 times in Egypt. I think twelve or thirteen years ago I approximated that I had crossed the Atlantic fifty times. [585]

One of the first things I investigated was the first taxicab company formed in New York City. They had three and half or four million dollars in debentures. The Baron was interested in the Kansas City and Oregon Railroad. He was also interested in the Queen City Land Company. "Oh, he had diversified interests all around, in Texas and California and different places; and it was my work to investigate how these things were going and make a confidential report to him.

After I left Baron Lichtenstadt in 1909 I spent a great deal of time on the Continent investigating different things. I tried to buy Salvarsan from Professor Erlich in Berlin. I just missed. It became very successful.

Then through a friend, who was a nephew of the Secretary of the Papal, I contacted Professor Bruscatini, who had discovered the Bruscatini serum for tuberculosis. I brought him over to this country together with Enrio Stagg from Equador, his friend, and interviewed most of the big specialists in the tuberculosis world, among them Dr. Thomp-

(Testimony of H. Harry Meyers.)

son, head of the Lake Placid Sanatorium. We tried to capitalize this, but it was very hard without the backing of the American Medical Association. It was not perfected. It was in 1913 that I came over with Bruscatini.

I went back to England and returned in April of May of 1914 on some other business. I know on August 10, 1914 war was declared. I rushed back to England to settle my affairs and back to this country again.

Q. All right. When you returned to this country at that time, what was the extent of your personal wealth?

A. Well, I had lived very extravagantly and my work is very expensive, but I came back here and I grabbed [586] what I could; I had about 75,000 pounds, approximately, I would say.

Q. \$375,000.

A. \$375,000; something like that.

Q. A pound is worth about \$5.00?

A. Yes.

I have never told anybody that I was a millionaire or multi-millionaire. Nothing of that kind was ever said by me.

When I came back to this country in the fall of 1913 the war was on. I was very well acquainted with a great many English and French commissions and I did some business and I put some business in the way of people.

W. R. Hopkins came to me with a letter of introduction. He was trying to build a subway system

(Testimony of H. Harry Meyers.)

in Cleveland. He told me if I would assist him and get him the financing he would give me a commission. I think it was about seven or seven and half million dollars for the first unit. There is a law in New York allowing an underwriter a commission of five percent. I was very well acquainted in New York and introduced him to a number of banking houses—Seligman Brothers, Mr. Warburg of Kuehn Loeb, Goldman Sachs. I was also acquainted in Brown Brothers Banking House. I do not remember all of them.

I was not able to interest financial support for the project. Difficulties arose over labor costs which exceeded estimates and the bankers were not interested.

I knew a man by the name of William Hall, who introduced me to one Mel Dalton, who told me of a manganese property near Elkton, Virginia. I heard that the United States produced only about one percent of the ferro-manganese used in the country, and the rest came from [587] England, Brazil, South Africa and India. I found a very good friend in Charles Schwab of Bethlehem Steel and knew Archie Johnson, Vice-President of the company. They said there was a great demand for manganese, so I went to Elkton, Virginia and obtained six months option on 130 acres of the manganese property in the Blue Ridge Mountains in Shenandoah.

Mr. Hopkins joined with me and we formed the United States Manganese Corporation. The stock

(Testimony of H. Harry Meyers.)

holders were Hopkins, myself and Mr. Dalton, who had a percentage for bringing the deal to me. I knew Archie White, banker, of A. S. White & Company. He said he had a furnace in Temple, Pennsylvania and proposed that we join with him. We did so and formed the Seaboard Steel Company. Hopkins became President and I was treasurer of both companies.

I first became interested in the Translux matter, I think, in 1919. Harry Davis of Pittsburg had a chain of theaters. He introduced Mr. Troeger to me. I wrote the letters, exhibits 103 to 106 inclusive about not paying the promissory note. I had paid him some cash from time to time. I cannot remember how much. Then I gave him my note for \$7500 and paid \$1500 on that. Mr. Davis told me if I wanted to keep the invention I had better not give him all the money so I kept putting him off. The note was made payable to the Irving National Bank and I told the bank not to discount the note. I did later pay the note with interest.

I never promised John Troeger a lifetime job. The contract in evidence was not renewed because Troeger became a nuisance to Granville W. Mooney and a man named Jarvis, whom I put in and who worked out the idea. Mooney and Jarvis were the men who worked out the idea. [588] I think there were three companies. I do not remember the details. I think Troeger was given 1500 or 2000 shares. I cannot remember exactly without looking at the record. That was the settlement agreement

(Testimony of H. Harry Meyers.)

introduced in evidence here. These shares made a market on the New York curb exchange. I think I am correct in my statement that the stock was \$27.50 a share. The form of corporate organization was suggested by Percy Ferber and Benjamin Greenhut. Ferber was an Englishman associated in the Mexican oil venture financed by Lord Codrey. Greenhut was President of the Siegel-Greenhut Department Store in New York, and with the Greenhut Distillery in Peoria, Illinois.

I think I sold my interest in Translux to Ferber and Greenhut in 1923 at a profit. "I do not know, around \$150,000 or \$200,000 that I made out of it."

The company was tremendously successful. After severing connection with Translux I became interested in picture production with Harry Davis, the man who introduced me to Troeger. There was a man with us who had secured the right to Ibanez "Four Horsemen", a good picture. From the amount of hazard we took I did not make a great deal of money; maybe fifty or seventy-five thousand dollars.

I was married, I think, on March 19, 1925, six or seven months after leaving the motion pictures. I knew Mrs. Meyers eight or nine years before I married her. I met her in England in 1912. "I think in a period of a few months or something I gave her a matter of \$250,000."

We left for Europe and I combined my honeymoon [589] with a business trip. We went to Germany and to Prague, Czechoslovakia, where I had

(Testimony of H. Harry Meyers.)

a great many acquaintances, and knew John Masserich, son of the president of the Czechoslovakia. I went to get a contract for Kaolin that Bohemian Glass is made of. I did not do any good on that trip. I think we returned in August, 1925.

I knew Gavin McNab of San Francisco. He came to New York with Herbert Rothschild, who had just sold his theaters in San Francisco at a big price. We talked about a project to build a bridge across San Francisco Bay to Oakland. He said if I could get a permit from the War Department he could get a franchise from the City and County of San Francisco, and the fact that a bridge would cost a lot of money made no difference to him. I met Frank Eldridge Webb who had a permit to build from Hunter's Point in San Francisco to High Street in Alameda. I came out to San Francisco in 1925 and told Rothschild I had the permit. I formed the New York-San Francisco Development Company. Judge Golden, Rothschild's associate was president and Rothschild was one of his officials and directors. I transferred the Webb permit to the company and retained General George M. Goethals, who built the Panama Canal as engineer. Rothschild kept pretty well off and I saw that he was quitting and I went back to New York and interested friends of mine.

At that time I think there were 36 or 37 applications for a franchise. Defendant's A-184 is a copy of a petition for a franchise submitted to the Board of Supervisors.

(Testimony of H. Harry Meyers.)

Defendant's A-185 is the approval of the plan authorized by state law.

Defendant's A-186 is a letter from the War Department- [590] ment to Frank Webb issued by the Secretary of War and H. H. Taylor, Major General, Chief of Engineers.

Defendant's A-187 is another letter from the same source and A-188 is a telegram received in the course of negotiations.

Defendant's A-189 is another telegram on the matter.

Defendant's A-190 is a letter from C. E. Thorn, my counsel with reference to the matter.

Defendant's A-191 is a copy of a letter supplied by Mr. Eman, Western Representative for George Goethals. (2342)

Exhibits A-191, A-189 and A-188 read to the jury.

All of the applications for a San Francisco-Oakland Bridge were rejected because Hiram Johnson went before the Board of Supervisors and proposed getting money from the Reconstruction Finance Corporation to have the City and County of San Francisco build the bridge.

I knew John Z. Tinan, President of Bethlehem Steel Corporation in San Francisco. He told me that Joseph B. Strauss had been working five or six years on a bridge across the Golden Gate, but had not been successful because he was a great engineer but a hard man to do business with. He

(Testimony of H. Harry Meyers.)

said, "Doc, I think if you would join up with him you could get a bridge across there."

Joseph B. Strauss and I were competitors in the San Francisco-Oakland Bridge. He had an application in, but after several discussions with Mr. Tinan I agreed to meet Strauss and I did.

Strauss first wanted me to create a background." He knew that I had a very fine entre in San Francisco with the powers and he thought I could do it." I told him I wanted to be in the background. He agreed. He wanted the engineering job. I worked with him on the bridge project [591] from the latter part of 1928 or early 1929 up to 1933 or 1934, something like that.

Defendant's A-65 is a private code in Mr. Strauss' handwriting. Same admitted.

The "August" mentioned in A-72, a letter of Strauss to me, is August Fritzie. I got in touch with Fritzie as suggested in the letter.

"Serf" mentioned in defendant's A-74 was Warren Shannon, also a member of the Board of Supervisors. I contacted Shannon many many times, as requested in the letter.

O'Shaunnessy mentioned in A-75 was the San Francisco City Engineer. His statement referred to in the exhibit regarding the cost of a bridge was so fantastic that I told Mr. Strauss not to worry; that I would take care of it, which I did.

Exhibit A-55 is a paper brought out by the engineers of San Francisco opposing the bridge when

(Testimony of H. Harry Meyers.)

the Golden Gate Bridge bonds came up for a vote. Said exhibit admitted.

Defendant's A-192 is a letter received from Strauss with reference to the Golden Gate Bridge.

A-193 is a letter I received from George H. Harlan, the attorney, who was counsel for the Golden Gate Bridge District and who testified he had never seen or met me.

In the statement in A-178 saying, "I wish you would please keep in close touch with Harlan on this point and see if you can arrange to let him show you the resolution as he proposes to draw it up so that you can check upon this point, or even better have Joe check up on it to make sure." The Joe mentioned was Joe McIniny, an attorney who acted for Strauss on several occasions. I talked with Harlan and McIniny talked with him. [592]

I obtained letters along the lines suggested by Mr. Strauss, Exhibit A-81, letter of September 9, 1930, from the Rosoff Construction Company, that built the 8th Avenue sub lines, McGowan, who built the 6th Avenue sub lines oh, I saw a number of them, and had them sent to Strauss.

There was a lot of threatened activity in the 1929 and the 1931 sessions of the legislature which could have stopped the Golden Gate project. I took the matter up with Tom Finn and it was taken care of. The proponents of the trans-bay bridge were attacking the Golden Gate Bridge. They thought it would be a drawback to their own efforts.

(Testimony of H. Harry Meyers.)

Herbert Fleishacker, mentioned in A-87 as killing the market in New York, was head of the London-Paris Bank and I think was director of the Southern Pacific.

With reference to Exhibit A-89, I had several discussions with Strauss about the financing of the bridge.

I brought Mr. Diamond, mentioned in A-93, to San Francisco. He was Vice-President of the Rosoff Construction Company, subway builders and two of his engineers. They wanted to take the bonds and construct the bridge. The proposal was not accepted. It created the bond market.

Serf and Fish mentioned in A-95, were Warren Shannon, a member of the Board of Supervisors and Tom Finn, who was sheriff of San Francisco.

There was great doubt on July 13, 1932 about the bridge going through to completion, as indicated by defendant's A-96. Rosin mentioned therein is Rosoff, a large contractor whom I brought to San Francisco. [593]

Rosoff submitted a proposition. It was really the basis of getting these first bonds sold.

Exhibit A-100 is a letter from Strauss to Meyers, dated August 9, 1932, stating: "The Rosoff proposition is due here tomorrow morning. I hope to get the details before the Board meeting. It will not be presented to the Board until the committee has a chance to study it. The meeting will probably be adjourned for a week or so to consider it. Felt was

(Testimony of H. Harry Meyers.)
just in and said he orientated Trumble on the danger of delay of R. F. C. and that if Rosoff's proposition good."

Defendant's Exhibit A-101 is a letter from Strauss to Meyers, stating: "There is another Board meeting next Wednesday and I shall probably have to return Tuesday night for I think I should be present. I think there will be several offers for the bonds direct and if these are all acceptable I think the Board should close. In other words, I think now we must now cinch this thing instead of waiting on anyone else. We are beyond the time when we can take chances. Rosoff will have up to that time to put in a proposition if he intends to come through. Please consider as strictly confidential the fact that the Board will consider private propositions because Filmer does not want this to be known even to the Board members. Yours, Joe".

Defendant's Exhibit A-102 is a letter from Strauss to Meyers, dated October 4, 1932, with reference to subconstruction bidders. I followed through on that letter and saw several large contractors.

With reference to sub-structure bids I talked with a number of big contractors, but they said it would not be worthwhile for them to move equipment out to do the job. [594]

I talked to Porter Brothers, as suggested, the Puget Sound Company and Charlie Shay, and Shay finally got the job.

(Testimony of H. Harry Meyers.)

I had a dispute with Mr. Strauss before March 1935.

The break was caused by Strauss' statement to me that he was not being paid by the District and so could not pay me. I learned that he had been paid. I came down to San Francisco. He still denied it. I had a statement from the office showing that he had received these payments, "and that is what brought about this thing."

There had been irritations before that growing out of his relations with his first wife, whom he wanted to divorce. I was put in as arbitrator. He wanted to settle with her and I did not think she was receiving what she was entitled to.

Strauss also had had considerable trouble with another associate, Charley Wienfield of Chicago.

Prior to the time of A-180 I instituted an action against Strauss and that resulted in bitterness and in the summer of 1937 there was a pending lawsuit on the compromise agreement. My dealings were with Strauss as an individual and not with the corporation.

Exhibit A-67 is a letter with an attached proposal. Strauss wanted to make a California corporation with stock on a 51-49 basis. He offered to give me that. I told him that I did not want any stock in any corporation. He offered me 33 1/3% interest in the Strauss Engineering Corporation and I refused to take that [595]

I never talked with Strauss about the agreement of March 30, 1935. He evaded me.

(Testimony of H. Harry Meyers.)

Relative to plaintiff's exhibit 187, my signature card in the 6th and Alexandria Branch on which I wrote "H. H. Meyers, business or occupation—engineer", I was trying to secure a franchise for Strauss to build a double rail monorail railroad from Glendale to Hollywood, into the terminal of Los Angeles.

Defendant's A-194 is a prospectus of one of those projects, a monorail line across Westlake Park.

A-195 is a proposed air tram system for the City of Los Angeles. That was prepared by Strauss.

Exhibits A-194 and A-195 admitted.

Regarding the Cascade Tunnel I met General Chittenden in London in 1906 and again in 1909. He had an elaborate plan for a low level tunnel through the Cascades. I went to Pierson's, who built the Manchester ship canal, and spoke to them about it.

In 1920 I saw an account of the Cascade Tunnel in a London engineering journal. I met John P. Hartman. He was a friend of Senator Boyle's, and head of Good Roads Organization, or something like that. That is how I started it. I was up here maybe fifteen or twenty times on the proposition.

I remember well the dinner I gave for the Cascade Tunnel Association at the Washington Athletic Club in 1933. Exhibit A-196 is my check that paid for the dinner July 14, 1933. Said exhibit admitted.

Strauss was guest of honor and made a speech. He said that through my work and cooperation the Golden Gate Bridge became a reality, that he had

(Testimony of H. Harry Meyers.)

intended to retire [596] after its completion, but that I had induced him to come up here and now he would go along with me and that would be his last work.

Throughout the time I was connected with the Peoples Gas and Oil Development Company I was actually working on the Cascade Tunnel matter. I thought it would be a great thing for Washington and certainly if I could promote a \$50,000,000.00 project I would receive a fine compensation for my efforts and work. At the New York rate of five percent I would make two and half million dollars commission out of it.

With reference to the Peoples Gas and Oil, when I said if I got my money back I would give the rest to charity I was absolutely sincere. "I always felt that he who giveth, receives, and I thought the Lord might help me along a bit."

I first met William A. Broome in November or December of 1933 through a friend from Schenectady, New York who was in Los Angeles. He asked me to give Broome an audience so I met him in a private sitting room of the Gaylord Hotel. He had a large portfolio and an armful of maps and started to tell me about the Frenchman Hills acreage.

Broome said he had spent a lot of time and money to acquire the leases and was broke with his shoes worn out, and two children who had lived for two days on a can of beans; that he had carried the oil project from one major oil company to another. I gave him \$30 or \$40 because of his children and he

(Testimony of H. Harry Meyers.)

started to cry. He was co-defendant and acquitted in the previous trial.

Broome told me of the time he had spent up there and also introduced McKim Hollins. He said he had been interested in oil in Mexico and in the Kettlemen Hills in California. I think he said he represented John Hayes [597] Hammond and Ogden Mills interests and brought in a well in Tampico or something in Mexico.

Broome showed me exhibit A-113. It is the same opinion he gave me verbally, that he thought it the biggest untouched structure in America.

Exhibit A-113 admitted and read to the jury. Broome also said he had a man named Roberts, and I think, Doane, investigating the district and he had a lot of United States reports. He showed me Roberts' report, defendant's A-130. I think he said he had spent five years on the property and some \$55,000 or \$60,000.

Later he brought an old gentleman named Sam Adams, and another named Koontz, who had advanced, I think, \$17,000 or more. Hollins said he had a contract with Broome, but had some income tax troubles and could not carry it out.

Broome said he had had a lot of experience in the oil business. He did not claim to be a geologist, but said he thought he knew more about Frenchman Hills than any geologist.

I talked with Broome maybe half dozen times before I came up here. I wrote to John P. Hartman

(Testimony of H. Harry Meyers.)

and received a reply, which is defendant's exhibit A-197. Said exhibit admitted. Shortly after that I stopped in Seattle on my way east and spent most of my time with Hartman. He was very urgent for me to participate. I called Gail Matthews over from east of the mountains. Matthews told me there were six underlying leases with a big acreage; that he had talked to many engineers who had inspected Frenchman Hills; that he believed there was a great opportunity to drill the structure. I stayed over two or three days and he impressed me very much. I investigated and found that he [598] was a man highly regarded and influential. He showed me a number of reports and letters by field men who had inspected the property and had a great deal of data concerning the same. He told me of gas in an adjoining county at Rattlesnake Hills and he believed it would be a great thing for the state and wanted to see the project developed. In fact, he sold me.

At that time I knew William Markowitz, not very well. I did not know Simons as well as Markowitz. I knew they were operators and owned a resort up in Arrowhead. I had known them maybe four or five years. I was introduced by Milton Black, who was in the Prosecutor's office in Los Angeles.

I discussed this matter with Black about 1934. I do not recall whether he had left the prosecutor's office to connect with the firm of Pacht, Pelton, Warren & Black. He was operated on for tumor of the

(Testimony of H. Harry Meyers.)

brain and died about eight months ago at 37 or 38 years of age.

After the conference with Hartman and Gale Matthews I went to New York and returned to Los Angeles about the middle of March. I communicated with Markowitz and Black. They were interested. I told them what Matthews and Hartman had told me and what other information I could get. When I returned I talked with them. They wanted me to join them and they wanted to come up here and put this deal over.

Plaintiff's Exhibit 8 is a document executed right after I returned, about March 16, 1934, and is the preliminary agreement.

Defendant's A-198 and A-199 are two checks payable to the Atkins Corporation, March 26, each for \$5,000. They bear my signature. Said exhibit admitted without objection. [599]

I delivered those checks to Mickey Black on the date they bear, March 26, 1934.

I think there was some other instrument drawn up. I have a faint recollection of it.

Shortly after this transaction on March 26, 1934, Markowitz, Simons and I went to Seattle.

The forming of the corporations was in the hands of Mickey Black and I am quite sure they were formed. We stayed in Seattle only four or five days. At that time my understanding was that the drilling was to be paid for out of a percentage of the lease sales. I don't know the percentage to be

(Testimony of H. Harry Meyers.)

paid. At that time I had no responsibility for the drilling.

If the lease sales were not sufficient to provide the funds I was to put up the money. I discussed that with Markowitz and my attorney, Mr. Black. After returning from Seattle the end of March or the first of April, 1934, I told Markowitz I could not devote a great deal of time to the sale of leases. So, I said, "Why don't you sell the leases and let me dig the well—Broome and I." Markowitz said he did not know, but that that would be just as well. I talked with Broome and he agreed, but said he wanted a dollar an acre for his leases, which would be \$135,000. I discussed it at great length with Markowitz and he said, "We don't want to pay that much." We finally compromised on fifty cents an acre, or \$65,000.

I had a number of estimates as to the cost of the well. Broome estimated \$125,000. An old-time operator named Graham, whom I knew, estimated \$175,000. My attorney, Mr. Black, asked me if I ever had any stock in any of those companies, and I said, "no". Black said, Why don't they take the Peoples Gas and Oil Company stock [600] and give you the Peoples Gas and Oil Development Company and you go on and do the drilling and let them sell the leases.

Black said it would simplify matters if a promissory note for \$65,000 was given, which was done. I never had a copy of the preliminary contract, being Government's Exhibit 8, and the copy I was

(Testimony of H. Harry Meyers.)

supposed to have was left with Mr. Black. The other parties were to turn in all of the copies of the contract to Black and he would destroy them and that would finish the contract and act as a rescission. After that I supposed the new plan was carried out, and I paid no further attention to it. No certificate of stock up to that time had ever been issued to me. I don't think any was issued.

As to the alterations in books of account and minutes of the company I never knew anything about that until the first trial, "but I heard that such a thing was done."

At the time I had the discussion with Markowitz and Simons about not being able to stay up here and work, I asked them to look after Mr. Broome and assist him in putting up the camp and whatever was expended they could place against this note. They said they would be happy to do it. I had great confidence in Mr. Markowitz.

Mr. Broome told me he had given an option on Rattlesnake leases to the Peoples Gas and Oil Corporation.

With reference to plaintiff's exhibit 21 I have seen the broadside. I do not know whether I have seen them all. I am not sure whether I ever saw the statement on the third page of exhibit 21 regarding the geological advisory committee. If I had I certainly would not have thought it anything wrong. Broome had shown me letters and [601] I think a contract with Dwight C. Roberts and Ward Blodgett. "I had talked to him and I

(Testimony of H. Harry Meyers.)

wouldn't see anything wrong in a statement of that kind because that could be carried out if he wanted to." Subsequently I heard something about objections by these men to the use of their names. I believe in the later issues of the broadside the names were removed. I remember plaintiff's exhibit 31 very well.

I have seen every one of the letters, being defendant's A-36; A-119; A-121; A-128 and A-129. Exhibits A-128 and A-129 read to jury.

I have seen A-132. Same read to jury in part.

I remember Mr. Duncan, who testified, very well. I do not remember ever showing him a copy of anything. I never discussed with him the project embraced in the Broadside.

I do not know of any misrepresentations in the sale of leases by the Peoples Gas and Oil Company. I did not hear any statements made at meetings I attended that were not true to the best of my knowledge. I attended perhaps one half dozen meetings. I do not think any more.

I never asked anybody to help me in connection with drilling the well.

William Markowitz suggested the contract of October 16, 1936. I know what prompted it. I was with Markowitz in Washington, D. C. when we asked for a hearing before the Securities & Exchange Commission. "I was a very good friend of Mr. J. D. Ross and he made a remark that he felt the Peoples Gas and Oil Company was selling

(Testimony of H. Harry Meyers.)

a great many leases and that they ought to assist me in drilling that well." [602]

Specifically, who delivered the proposal contained in Defendant's A-39 to you?

A. Mr. Jorgenson, who was vice-president of the Development Company. Yes, I recognize this.

Q. And what did Mr. Jorgenson tell you, if anything, about whether or not the Peoples Gas & Oil Development Company was interested in accepting the suggestion that Mr. Markowitz had made, calling your attention to Defendant's Exhibit A-42, to refresh your recollection, if it does,—the proposition that Mr. Markowitz had made to the Development Company with reference to turning over the uncollected accounts receivable?

A. Well, he said he thought it would be a good protection to the leaseholders. He knew that I had made quite an investment and he thought that they should run their own affairs, and if I would turn over the equipment, the machinery and so forth, Mr. Markowitz agreed to turn over approximately \$550,000 or \$600,000 worth of accounts receivable.

He said he thought that would be more protection in case anything happened to me, and they were going to go on with this well.

I agreed upon the point that I would do that providing that I could always have an option to have my equipment back if they ceased drilling.

The original proposal did not contain the option for me to take back the machinery and resume the

(Testimony of H. Harry Meyers.)

drilling. I was insistent upon that being put into the contract or I would not have accepted it. It was put in.

Up to October 16, 1936 I had advanced to the Development Company and to the Drillers, Inc. about \$200,000. for drilling in addition to the \$65,000 which I received for the leases. The only source of recovery for me was the pro- [603] vision in the contract of October 16, 1936 for a 12½% royalty out of oil. In addition to the drilling equipment Peoples Drillers gave up ten percent of the twenty-two and half percent of the royalty they had reserved.

The Peoples Gas and Oil Company had advanced money for drilling equipment and drilling costs during 1934, taking credit against a promissory note. Markowitz wanted me to give him back what he had advanced and I returned the money to him because he had another deal and wanted some money real quick. I just don't know the amount; around \$30,000, I believe. Defendant's Exhibit A-200 is the check I gave him to the Peoples Gas and Oil Company for \$38,233.48. His deal did not go through and he returned the money to me in a few days. Exhibit A-200 admitted—original of Government's Exhibit 271.

I never had anything to do with the books of account of the Peoples Gas and Oil Company or Corporation. I had no access to them.

Exhibits A-201, A-202 and A-203 are checks I gave to the Development Company and the Drilling Corporation. Said exhibits admitted.

(Testimony of H. Harry Meyers.)

No one contributed to the \$200,000, approximately, that I testified to either in the form of gifts or dividends. I drew no salary and no dividends from any of the companies. I sustained the loss of \$200,000 in the operations and I had a tremendous expense in the previous trial and lost nearly five years of work by the indictment hanging over me and other expenses for this trial. It has cost maybe \$200,000 more.

I never suggested to anybody that I wanted a receiver appointed for the Peoples Gas and Oil Development Company after the contract of October 16, 1936. I had nothing to do with the operations of any of the companies. [604] Neither the Development Company nor the receiver offered to return the machinery and asked me to resume drilling.

I had nothing at all to do with the sale of participations. At the time I promised to see to it that the Frenchman Hills project was given an adequate test. I made the promise in good faith with intent to keep it. I never devised or attempted to devise a scheme or artifice to defraud any of the people. I never, pursuant to such scheme, employed the United States Mails. I never conspired with anybody to use the mails in a scheme to defraud.

Cross Examination

By Mr. Hile:

I got the title of doctor when I was fifteen or sixteen years old. I never used it. Everybody called me doctor. Once in awhile I have signed my name

(Testimony of H. Harry Meyers.)

with the title. I think I did it in some of these minutes.

I had \$25,000 when I first went to England. I tried first to embark on Antiflogestine. I did not make anything on Mother's Poultice. I made money out of the British Organo Therapy Company. It handled a serum that went to the medical profession. It was strictly an ethical proposition. I organized the company. It made a lot of money and I think it is still in existence. I think I made around 50,000 pounds or \$250,000. when I sold out.

Then I went to Lisbon, Portugal for Arthur Silver. I contacted banking houses, etc., underwriting and municipal housing program. I received a commission and an opportunity to make money buying sites and taking options on property. I think the amount of money I made was close to [605] 20,000 pounds or more. I did not have any investment there at all. I was a promotor. Besides the 20,000 pounds I made maybe 5000 or 10,000 pounds. After I came back to England I became acquainted with the head of Kent Collaries, that was a coal operation. I made some money out of that, but not a great deal; \$10,000, \$15,000 or \$20,000 I didn't count that as very much. I made contracts for the head of the Collaries. He wanted to amalgamate with several others. It was not successful. I never brought about the amalgamation.

I worked for Baron Lichtenstadt a long time, six or eight years, up to 1909, something like that. I was his confidential man. I investigated possible

(Testimony of H. Harry Meyers.)

opportunities for him and checked very closely the various factors involved in each situation and reported. "I had a drawing account of \$30,000 a year in American money, which was about 6000 pounds." I worked on a commission basis. I would investigate and if he went into a deal I would get a commission. I made a lot of money, over one-half million dollars out of my association with Lichtenstadt, excluding expense money. I haven't any record, I left my records in England when the war broke out.

I left Lichtenstadt about 1909 and spent a great deal of time on the Continent investigating different things, including Ehrlich's Salvasan. I tried to get into that and spent a year and a half or more in an effort without success. "I don't think I did much of anything that was worthwhile" after that.

I might have made some money here and there, but nothing to speak of. I never built any bridges over there, nor in the United States, or anywhere.

[606]

When I came to the United States in 1914 I had about \$375,000 in cash and foreign drafts which I kept in a safety deposit box. I cashed them with investment houses that I did business with. I don't have the ledger pages on these deposits and have made no effort to secure them.

I never told anybody about my worth. It is an absolute falsehood that I told Mrs. Phelan I was worth over \$15,000,000. I never told Mrs. Fisher that I came over to America from England with

(Testimony of H. Harry Meyers.)

several hundred thousand pounds. I never told them I was a millionaire or had a million or more when I came to the United States. I never heard Broome say I was a millionaire or a man of great wealth, I do not know what Fisher said. At the breakfast meeting at the Gowman Hotel in a two minute introduction he said, "This is Dr. Meyers, that is drilling the well". I think that is about all he did say. I haven't heard him say I was a millionaire.

I have heard people say: "Doc you have got millions." I would laugh about it, but did not make any explanation of my wealth. I did not know anyone was saying I was a millionaire, in connection with the sales campaign, nor did I hear anyone say I was a millionaire at the sales meetings. They said I was a man of wealth, but whether they said "great" or not I can't testify to. Every promotor who has established himself is a financier in the eyes of a great many people.

I may have used the word financier occasionally, but very seldom.

When I came back to the United States my first venture was with Mr. Hopkins who testified here. I think the first was the United States Manganese. I think I put [607] up \$25,000. It was a war baby. It only lasted a short time. I never got any salary and no dividends. It was wound up by receivership. There were secured and unsecured creditors. I cannot tell the amount. I did not make a dime.

(Testimony of H. Harry Meyers.)

Next was the Union Manganese Company. Mr. Hopkins and I operated that. I think we put in \$15,000 each. It lasted only until the Armistice was signed, maybe a year and a half or two years. I drew no salary. There was no public offering of either stock or bonds.

Seaboard Steel was formed by August Hechtner of New York. I did not put any money into that. I had one half interest in United States Manganese, which was taken over by Seaboard. "I was Treasurer for a long time". I do not know whether I drew \$10,000 or \$12,000 a year for a year and a half. No dividends were paid. Bonds had been issued and 99 percent of them were taken over by three men in New York City. It was eventually wound up in a receivership.

In the three corporations I did not sustain a loss, but I did not make any money. I had some Seaboard stock. It was sold over the counter and I sold some of mine. I just about broke even. I think I had about the same amount left as when I came, about \$375,000.

The next venture was the Translux. I met John Troeger through Harry Davis of Pittsburg. I promised to finance it after I had investigated it and found whether it could be made a practical, commercial proposition. I bought the controlling interest.

I gave Troeger \$1500.00 cash and a note for \$6000.00. I never told Troeger he would have a life

(Testimony of H. Harry Meyers.)

job. He also got a block of stock, I believe 10,000 shares. The note was paid with interest. [608]

I heard his son say that Troeger died in 1927 or 1928. He was not so old. I thought he was around 65. I did not pay the note because I was investigating the idea and spent a lot of money before I made up my mind what I was going to do with it, and also Mr. Davis said to me, "Doc, if you give that fellow a lot of money all at once you will not only get the proposition to work on, but you will lose him."

I had given him some cash in addition to the \$1500.00.

Government's Exhibit 103 is in my handwriting. During the period I was dealing with him I gave him a few hundred dollars from time to time. I did not pay the note when due because Mr. Davis had said: "The minute you give him that money you will lose your inventor".

In Government's Exhibit 104 I said: "It is absolutely impossible for me to do anything with your note this month. I am not able to get any action on my affairs at all." I said that because of what Davis had told me. I had Troeger under contract for two years beginning January 22, 1920.

The letters with reference to the notes are dated July, September, October and November, 1920, which was after the time that the contract was signed.

I had about \$400,000.00 at that time, which money was in safety deposit boxes, and did not pay the note

(Testimony of H. Harry Meyers.)

for the reason that I have already given, that is, because of what Davis had told me.

I don't know whether or not his son asked for the payment of the note. I don't know whether Ferber finally endorsed the note or not. I suppose he endorsed it so that it could be discounted. I believe the Lux Company [609] was formed by Ferber, Greenhut and myself. I think I was President, but I am not sure. That was the sales company.

Another corporation I think was the Translux Company. I am not sure whether there were two or three companies. I left about 1923 and during the time I was with the company it made no money.

Troeger was not re-employed because he was not capable of carrying on the work. He just had an idea which was perfected by a couple of men that we brought in.

He had the patent on it, which had been transferred to the Lux Company, in which I acquired the controlling stock. Troeger got 1500 or 2000 shares of Translux Company stock, and the Translux Company was afterwards the whole company.

I made approximately \$150,000 to \$200,000 out of the deal, some of which I made by playing the market and the rest from the sale of stock to Mr. Ferber.

I never did make the remark to Mr. Troeger's son in 1923, to the effect: "I nicked the old man out of \$100,000 and forced him to sell out."

Government's Exhibit 110 is the agreement. I got \$10,000. Troeger got whatever the contract re-

(Testimony of H. Harry Meyers.)

cites, and the note was paid in full, with interest, as appears in the contract. I asked the officers of the bank not to discount the note because they would have discounted the note if I had not asked them not to.

I made more than \$100,000 from Translux transactions. Whether I got \$100,000 from Greenhut and Ferber I am not sure. I do not remember whether I kept it in cash or in a bank. I do not think I have any records that they paid me anything. That was 25 years ago.

After the Translux transaction I helped finance a couple of pictures. We had a syndicate. I put in \$25,000 or \$30,000. I cannot answer the question whether cash or [610] through a bank. I did not make much, maybe \$40,000 or \$50,000. I do not know in what form I was paid. I suppose I deposited the money in my bank account. I do not remember what bank. I was doing business with several then.

Q. Did you then add to your safety deposit box on that transaction?

A. That was always my way of doing it.

Q. How much did you have in cash in the box at that time after you made money out of the picture production?

A. Well, that wasn't very much. It was a decimal to what I had there,—maybe thirty or forty thousand dollars. I don't remember.

Q. How much did you have altogether?

(Testimony of H. Harry Meyers.)

A. Off-handed I can't tell you these figures. I had well over \$400,000 at that time.

Q. All in cash?

A. All in cash. I might have had——

Q. (Interrupting) Was it bills or what?

A. Bills, large bills, of large denominations.

Q. Large bills? A. Yes.

Q. What year was this now, when was this period you are speaking of?

A. That was in 1923 or 1924. I don't remember which.

I was married in 1925 in New York. I had given my wife money before that. I gave her about \$250,000 over a period of time. I told her to put it away and keep it. I do not know how much she had. She may have had \$100,000. I never went into her affairs. I gave her the \$250,000 in cash bills. "She had maybe ten, fifteen or twenty thousand dollars in gold I gave her."

She did not deposit the money. She put it in the safety deposit box, as I wanted her to do.

We went to Europe, I think in April, 1925. [611]

I took a letter of credit, I suppose. How much I do not remember now. I suppose I took \$25,000 or \$30,000, something like that. I deposited the money and then took a letter of credit.

My next venture was the San-Francisco-Oakland Bridge. I came out in October, 1925. Mrs. Meyers did not come out. I think she came three years later.

(Testimony of H. Harry Meyers.)

I met Herbert Rothschild in New York. He had sold a lot of theaters and had a lot of money. I had no deal with him in which he was to give me any money. He was to stand part of the initial financing to bring up a proposition that could be presented to bankers.

I worked on that bridge for three and half years. I did not make any money. I lost. The syndicate I was in lost well over \$300,000. I think I lost \$75,000 myself.

The New York-San Francisco Development Company was my company. It was set up by Judge I. N. Golden and Mr. Rothschild, who was an attorney. I was not an incorporator or director. No stock was issued. I had a contract with Rothschild, who was to get a certain percentage, "if I did any good out of it".

The other men were Eugene Cline of New York, who was a very rich man, Ludwig Stein of Chicago, who was president of Kuppenheimer's and a man named Croffet, who is now dead. My evidence of association with these men is that they gave money to me. I would have to look up the documentary evidence.

What I did in San Francisco during the two and half year period was what I told you. I was trying to create a consciousness. What does any promoter do? I knew every political leader there. I was a friend of [612] Jim Rolfe, who was mayor for years. I knew most of the supervisors; but my background was Tom Finn and a man named Eddie

(Testimony of H. Harry Meyers.)

Grady. I attended every bridge hearing for a year and half. In the Board of Supervisors I created a consciousness about the bridge. There were 37 applications. I never gave a man a dollar in my life except to keep him honest. I never would pay a public official a dime.

I knew Ray Taylor of the Call-Bulletin and Mr. Knutson. Taylor introduced Knutson to me as a representative of Inland Steel. Knutson had no more to do with Inland Steel than I had to do with the Bank of America. They invited me up to their room under a subterfuge and wanted to buy me out. I did not tell Knutson that I had bought about six of the Board of Supervisors and would deliver them over to his company if he would pay \$100,000. I would not give him thirty cents. I did not say that to Taylor and to Ryan.

I had no conversation about bribing anybody. Applebaum was associated with me. He was a great friend of Tom Finn's. He had been secretary for years to Mr. Sullivan in New York. They published a blast that long in the paper and mentioned my name. Government's Exhibit 283 identification is the article.

The article came out in the morning and I was so incensed about it that I do not think I was at the meeting of the supervisors that morning. I was trying to get hold of Knutson and was not able to contact him. I did get him into my room late that night. I did not tell him he had better sign an affidavit that the newspaper story was untrue or

(Testimony of H. Harry Meyers.)

there would be trouble for him. I asked him why a competitor would allow himself to make dirty, insinuating [613] remarks about a man he never knew. He left town the next day. He did not go because of what Applebaum and I told him, that is ridiculous.

Several members of the Board of Supervisors talked with me about it later and laughed about it and said it was a silly ridiculous story. From Jim Ross, the mayor, down they told me to pay no attention to it.

That was not what stopped the private bridge enterprise. That was stopped by the Southern Pacific through Senator Johnson, Wilbur, Secretary of War, Ogden Mills, the big man in San Francisco and William Crocker, Chairman of the Republican Party stopped it. Senator Johnson went before the Board of Supervisors and said, "There are 37 applications here to build a bridge by private promoters." I think I am correct in saying that 17 of them were Southern Pacific applications. The Southern Pacific did not want the bridge.

I had a permit from the War Department that came into my possession through Frank Eldridge Webb. I don't know what it cost me, but I had him on a retainer of \$1,000 a month for two and half years. He had an interest if I built the bridge, we gave him an interest; he had a certain commission out of what I made. I made advances to him. The first bill I paid was a \$2500 hotel bill.

Objection to plaintiff's exhibit 283 withdrawn and same admitted.

(Testimony of H. Harry Meyers.)

Strauss came to see me at the Palace Hotel. John B. Tinan of Bethlehem Steel was there. He tried to bring us together. I told Strauss I did not know whether I could do him any good. Tinan said, "Let Strauss do the engineering and you do the rest and I believe that you will bring it to a successful issue." I had many conversations with [614] Strauss about it. He knew what I could do. I did not have to tell him. I could assist him in his public relations work in the right way, give him the contacts he needed. I had to meet the big people of San Francisco and create a consciousness for the Golden Gate Bridge.

The city fought the bridge tooth and nail in 1929, although the Enabling Act had long since been passed and the district established. When it came to putting up \$35,000,000 it was a different issue because San Francisco was carrying 85% of the burden and the adjoining counties 15%.

I told Strauss I would help him in his effort, make contacts with construction people; get him in touch with the right people, and those he wanted to meet that he didn't know. I did not tell him that I would be responsible for his appointment as chief engineer, but the contract was conditioned on that, because if he got no money I would receive none.

Q. And now tell us specifically what you did in connection with the Golden Gate Bridge? Just what did you do?

A. I put myself in the hands of Tom Finn, who—

Q. (Interrupting) You put yourself in his hands?

A. Yes.

(Testimony of H. Harry Meyers.)

Q. All right. Go ahead.

A. And he introduced me to people that would help that cause.

Q. Who did he introduce you to?

A. Oh, God, too many to mention. I met most everybody around there.

Q. Well, they are alive now, aren't they, a lot of them? A. Some alive and some dead. [615]

Q. Finn is dead though, isn't he?

A. Tom Finn passed away a few years ago, quite a few years ago.

Q. All right. After you introduced him to these people what did you do?

A. Well, I think the best evidence is what the evidence has established there, what I did for him. He couldn't do anything without me.

Q. What did you do, specifically? I want to know what you did.

A. I saw construction people. I saw bankers. I run back and forth to Washington and New York and everything; there was always dissention.

Q. What did you do with reference to the bond election?

A. Well, if it wasn't for me getting Mr. Sam Rosoff—

Q. (Interrupting) The bond election.

A. The bond election?

Q. The bond election.

A. I done everything I could to make it a success.

(Testimony of H. Harry Meyers.)

Q. What did you do; what specifically did you do?
A. I interviewed people, talked to people.

Q. Make public speeches?

A. Oh, no; I never make public speeches.

Q. Well, the question then was up to the voters, wasn't it?
A. Yes.

Q. Did you go to the voters who were voting on the project in any form? [616]

A. Well, Mr. Hile, I never call on voters. I might have had people call on voters. The best evidence of it that it wasn't a feat accomplished, they were betting three and four to one that it would never pass.

Q. What did you do, though? I am not asking what the bets were. I want to know exactly what you did in connection with the bond election.

A. I have been telling you and repeating myself time and time again. I saw construction people. I saw bond people; I saw bankers.

Q. Who?
A. Who?

Q. Yes, who?

A. Banking house after banking house in New York.

Q. In connection with the bond election?

A. No, no.

Q. I am asking you about the bond election.

A. All I did was help as much as I could, and outside of that——

Q. (Interrupting) Well, what did you do to help, that is what I am getting at. Let's don't have generalities. I want you to get down to cases and

(Testimony of H. Harry Meyers.)

tell me exactly what you did in connection with the bond election. Let's hear some specific facts. That is what I want, Mr. Meyers.

A. Well, I didn't do a great deal about that, Mr. Hile. Mr. Finn did most of that. I never subjected myself to criticism because these sheets—if I looked around with the supervisor I was accused of bribery and most everything else.

Q. So you had no influence with the Board of Supervisors, did you?

A. I don't know whether I did or not. [617]

Q. Well, you know whether you did or not. Did you or didn't you?

A. I knew a number of supervisors, yes.

Q. What?

A. Whether I was influential or not, I don't know about that.

Q. Well, did you try to influence them?

A. I talked about the project, naturally, if you are representing something—

Q. (Interrupting) Did you go before the Board of Supervisors? A. I beg your pardon?

Q. Did you go before the Board of Supervisors?

A. No, I never talked before any Board.

Q. Did you contact them privately?

A. Have them to lunch, have them to dinner; met them socially, attend all kinds of different affairs that was given to them, given to people. I knew a lot of people in San Francisco.

Q. What was the purpose of contacting the

(Testimony of H. Harry Meyers.)

Board of Supervisors? What were you asking them to do?

A. I was asking them to see that—to use their influence to put that bridge across the Golden Gate.

Q. Well, they had already voted on that, hadn't they?

A. No, they hadn't voted on it at that time.

Q. When did they vote on that?

A. They voted that at a later date. I just don't remember what the dates are.

Q. They had voted that and the litigation was in progress when you went, and the picture was almost complete and establishing the boundaries?

[618]

A. With Mr. Strauss?

Q. Yes. A. That is not true. They did not.

Q. The district was formed in 1922?

A. They formed the district long before that; years ago. That district didn't mean anything.

Q. The Golden Gate District was formed years ago? A. Well, I think it was.

Q. Formed in 1929, wasn't it?

A. Well, the district was formed in 1929, that is right. You are right.

Q. And the appointments to the Board were made in 1929?

A. Yes, I think that is true.

Q. What, if anything, did you do in respect to litigation in connection with the Golden Gate Bridge? A. Litigation?

(Testimony of H. Harry Meyers.)

Q. Yes.

A. I had nothing to do with the litigation, Mr. Hile.

Q. Did you ever have anything to do with the case going to the Supreme Court?

A. Nothing at all.

Q. Why did you tell Swenson and Rich and Zimmerman that you had spent \$360,000 in swinging six counties in the bond election?

A. I never made such a remark.

Mr. Simon: I don't think there is any such testimony.

The Court: I don't recall it.

Q. (By Mr. Hile) Didn't you tell them that you had spent \$360,000 in the bond election, of your own money? [619]

A. That is an absolute falsehood.

Q. You didn't make any such statement?

A. No such statement.

* * * * *

Q. You told them, did you not on that occasion, that you had spent \$360,000 and said that you had swung six counties in the bond election on the Golden Gate Bridge? Did you tell them that or didn't you?

A. I never told them that or never made such a remark.

Q. And in effect that you had spent—they asked you if this \$360,000 had been spent in that, did they not? A. I never made such a remark.

Q. And they asked you if it was your money that

(Testimony of H. Harry Meyers.)

had been put up, did they not? A. They did not.

Q. And you answered, "Who else?" Isn't that right? A. That is not right.

Q. Not correct?

A. That is an absolute falsehood.

I had nothing at all to do with the publicity in connection with the bond election. "It was because Mr. Rosoff offered to take the bonds and construct the bridge that made it possible for them to get their first six million dollars from the Bank of America." I did not have to have anybody tell me that. I knew the workings and the manipulation of banking houses and investment banks. I had nothing to do with the syndicate taking the balance of the bonds.

"I tried to create a consciousness with the people that are worthwhile in the City of San Francisco, politicians." [620]

I think I met most everybody of note in San Francisco from Mayor Rolfe down. There was so many of them opposed to the bridge it looked like it would never be accomplished. Even the engineers brought out a protest. The sentiment was never favorable. I do not know whether I created a favorable sentiment. I tried. The best evidence is there is a bridge across the Golden Gate.

I tried to promote various other projects for Strauss. There was a lot of them. We worked on—that triborough bridge, the Narrows Bridge and the tram system. None were successful.

(Testimony of H. Harry Meyers.)

I never appeared before the Golden Gate District Board. I only knew one of the men.

My wife came out to Los Angeles about 1928 or 1929. We carried out the \$400,000 we had in cash in safety deposit boxes. That is simple. I have carried more money than that. We put in a safety deposit box in Los Angeles.

During the time I was associated with Strauss, before he received the appointment, he was not in good financial condition. We divided expenses. He paid some. I never told him anything about the money I had. I made a loan to him on one occasion. He wrote me in a letter, "—will be reduced to almost a negligible amount. I, therefore, like you, have got to develop other sources of income." I do not remember discussing that with him. He was always hard up regardless of how much he made.

Respecting Exhibits A-56, A-57 and A-58, the first one of March 11, 1929 was for \$120,000. Then we made the second one for \$100,000. There was so much expense and we made a change and I was to get \$100,000 net. As shown by Exhibit A-57, the contract of April 29, 1929, that was to supersede the first one, but he received more money than he expected for his fee. It became a bigger job than he expected and that was [621] our agreement. We made a new contract in 1933, showing the total amount to me \$220,000. The expenses were to come out of that. I paid Mr. Fritzie and Mr. Brennan and somebody else \$17,000 or \$18,000.

(Testimony of H. Harry Meyers.)

Government's exhibit 187 is my signature card in 6th and Alexandria Branch, I started to write "engineering" but made "engineer". I was working then on the Westlake Bridge and the tram project. I never claimed to be an engineer. I never heard anybody say in the public meetings that I was an engineer.

Respecting exhibit 266, I did not tell Mr. Oldfin *are* anybody that I was a doctor. That is not my handwriting on the card. I suppose Mr. Hartman called me "Doc" and he took it for granted. I did not notice the M.D. on exhibit 267, photostat of a bank statement. The M.D. is scratched out. I did not go in and tell them I was not a doctor.

I just cannot recall when I had the first difficulty with Mr. Strauss. I think it was in 1935. He had been receiving payments and denied it. Secondly, he and his wife were separated. He wanted me to see her and see if I could get an amicable settlement. He made her a proposition which I did not think fair. That was three years before I had trouble about my payments. I think that was in 1932, as shown by the check.

I saw the account of the Cascade Tunnel project in a London Engineering Journal in New York in 1920 and I wrote to John P. Hartman. His name was mentioned and I think Judge Austin Griffith. I brought Strauss up in trying to help him get the engineering contract so that I could get a commission, naturally. I did not introduce Strauss at the dinner. I think John P. Hartman did. [622] He

(Testimony of H. Harry Meyers.)

was toastmaster. He said Strauss was a great genius, great engineer and eulogized him deeply. My speech was very brief. I told them that I knew General Chittenden in 1906; that I had come out here in 1920 and I was very much interested in the project; that Eastern Washington was more interested than Seattle and Pierce County and I thought it would be of great benefit to the state. I also said I thought those bridges were the making of San Francisco.

Strauss said he had thought when he finished the Golden Gate Bridge, which was his great dream, he would retire, but he knew I was very much interested in the Cascade Tunnel and he thought if I took on the project, he was willing to come along with me and that would be his finale. He eulogized me and said verbatim: "If it hadn't been for this man there never would have been a bridge in San Francisco."

He did not say that he had not been able to make any headway until I came into the picture and helped with the Enabling Act. He did not say I had helped him in the bond election specifically. He said without money there would not have been a bridge. "I don't think there ever would have been a bridge there if it hadn't been for me, Mr. Hile—the Golden Gate bridge."

Strauss had been working on the bridge I think for six years before I came in. There were a number of people working on it.

(Testimony of H. Harry Meyers.)

Q. The Enabling Act had been passed and you had had nothing to do with that?

A. That is true.

Q. The bridge district had been set up and you had nothing to do with that?

A. When I came into the picture he was just as far from building that bridge as you are. [623]

Q. What did you do that made it possible for him to build the bridge?

A. Made all of these contacts that I told you, with real people, men with power and everything else, that goes to build up a proposition like that.

Q. You made no contacts with the Board of Supervisors?

A. Oh, no, I don't know supervisors.

Q. You made no contact——

A. (Interrupting) They called them in San Francisco "sloppy-visors". They didn't call them supervisors.

Q. You made no contact with the bridge district?

A. I never met one of those men, I tell you, except Mr. Trumbull.

Q. And they were the engineering committee who had the selection or the appointment of the engineer?

A. Oh, yes, that is right. They appointed him didn't they?

Q. So then what did you do to make it possible that they appointed him?

Mr. Johnson: I submit he has gone into that.

The Court: The witness hasn't answered yet. He

(Testimony of H. Harry Meyers.)

has answered in generalities, and that is why the Court is permitting this cross examination. If he can't answer specifically——

Q. (By Mr. Hile) Yes, I want to know completely and precisely what you did that you claim that you are responsible for the bridge, and that if it had not been for you there wouldn't have been a bridge. Just exactly what you did and with whom.

A. Oh, I have told you what I done.

Q. Can you tell us any better than what you have told us?

A. That is all I can tell you, Mr. Hile. [624]

I heard some remarks about being a builder. In my talks on a couple of occasions I told the people just what I was and why I was here; I was not a doctor, an engineer or an oil man.

I don't think I read the clippings put out by the Peoples Gas and Oil about me. I think I was interviewed in Seattle once or twice. I don't pay any attention to that. It doesn't mean anything. I do not think I ever read the statement in the Aberdeen Daily World, "Dr. Meyers, the man responsible for the construction of the Golden Gate Bridge in San Francisco."

I don't think I ever read the statement in the Seattle Star of December 31, 1934: "Dr. Harvey H. Meyers, who is constructing the Golden Gate Bridge". My name is Harry, not Harvey.

I don't remember reading the article in Commerce & Industry magazine, "Dr. Meyers, a principal in the Strauss Engineering Construoctien Company now

(Testimony of H. Harry Meyers.)

completing the Golden Gate Bridge." I never made the remark to anybody that I was a principal in the Strauss Engineering Company. I did say I was associated with Mr. Strauss.

I did not tell Mrs. Phelan that I was President of the Strauss Engineering Company. I did not tell her I was worth \$15,000,000.00. "No, it is so wrong it is silly. Why should I talk to a girl who came into my apartment to take a letter." I never said to her that I had homes in New York and San Francisco. I never told her I knew all of these personages in Europe.

I never told Tyler Rogers I was of the firm of Meyers & Strauss, engineers.

I do not remember a remark by Fisher when he introduced me in December, 1934, that I was a millionaire. I never heard it except that I was a well-to-do man. [625]

I investigated several properties in the United States for Lichenstadt, the Kansas City & Orange Railroad, The Kansas City Land Grant Company, the New York Taxicab Company. I came to San Francisco and reported on some brewery interest there. I went to Montreal; I went to Winnipeg, Calgary, Regina, Moose Jaw, when McKenzie Mann was building that railroad. "I done a great deal of investigating for him."

The promoters would come to England with a project. I would make an investigation and pass it on; check on all the facts and see whether the facts bore out the story.

(Testimony of H. Harry Meyers.)

When Broome came to me with his project in 1933 I wrote to John P. Hartman and talked with oil men down South. I did not talk with geologists. I had no geologist and I sent none up before I went in. I checked with Mr. Roberts, with Ralph Arnold and Blodget, but not before I went in. I did not talk with oil men about the probable thickness of the basalt. I talked with Gale Matthews and with Mr. Hartman and Gale Matthews gave me a lot of reports he had. He had lived there nearly all his life. I did not check with any of the geologists that made the reports. Matthews said he did not believe the basalt would be over 2000 feet. I talked to Mr. Graham, an old oil man, before I went into the project.

I told Mr. Graham that Mr. Broome had estimated 1500 feet of basalt, but there might be 2500. He said he did not think I could drill that hole for \$125,000, but \$175,000. I did not check with any geologists.

I knew Hartman, and Gale Matthews and Broome were highly recommended to me, and all oil men were agreed you had to drill to find out whether there was oil or not.

The seismograph came in later. It would have cost \$10,000 a month; a test at \$10,000 would not mean anything. [626] You could not tell the thickness of the basalt with it.

Matthews said it was a gamble, but that he believed there was oil in Washington and he said they

(Testimony of H. Harry Meyers.)

had commercial gas in another county. He was a man who told the truth and made a great impression on me. I knew it was a wild cat, that I was taking a gamble. I never agreed to drill more than one well. I never heard that more than one well was promised. "A thorough and adequate test is one hole in any field".

Broome never told me he was a geologist. All he said was he had read about geology; that he had practical experience; he had been on this property three or four years, and he said, "I know as much or maybe more than any man that ever went over that property." Later Mr. Matthews gave me that same impression about his ability.

Mr. Graham told me Broome was a very capable man and knew something about the oil business. I did not ask him where Broome had worked. There was a man named Kitcherd who was an oil man, who told me Broome was very capable. Mr. Shirely, who sent him to me, said he had a lot of practical experience. I did not go to any geologist.

That is my signature on Government's Exhibit 8. There is no date on it. I am not sure when it was executed.

Government's Exhibit 20, for identification, is dated March 5, 1934.

I do not recall No. 20. I never had any copy of the contracts. They were always in the possession of Mr. Black. I do not think my counsel ever has shown me one like that or a similar one. I don't object to my counsel producing a copy if he has

(Testimony of H. Harry Meyers.)

one. (Mr. Simon interjecting: I had what may or may not be a copy, which I sent to Mr. Meyers.) If I had one it was given to Mr. Black, who was my attorney at that time. Mr. Black said it was of no use because that was not the set-up.

I never tried to get the contract back from Mr. Black. [627]

Mr. Markowitz and Mr. Black, my attorney, arranged most of the details as to how the project was to be set up. "I knew Mr. Markowitz very well, yes, but at that time I didn't know Simons so well."

I went into it in anticipation of making money out of it, but I also was accepting a great liability because they said, "If we go up there we might not be able to sell leases, so what are you going to do?"

Q. You only had to put up so much capital to the corporation, and if it failed you would just *lost* that original capital?

A. Well, there was a deeper protection than that, had to be given, than that.

Q. It was agreed that you were to put up \$5,000, wasn't it?

A. I think that I put up \$10,000. I am not sure.

Q. Was it all your money? All for your share of the capital stock?

A. That I don't remember, Mr. Hile.

Q. You mean you don't recall the details of this transaction at all, Dr. Meyers?

A. I really don't at all. All I know was this: That when we worked it out, at the finale, I said to

(Testimony of H. Harry Meyers.)

Markowitz: "You sell leases. I don't want to be bothered with that. I will drill the well."

I recall that when we were discussing the set-up (Exhibit 8) the plan was to form three corporations, a holding corporation No. 1; a sales corporation No. 2, and a development corporation No. 3.

Q. "One: This Corporation should take all the leases which are now held and convert them under a new form of community lease, so as to be consistent with the sales plan we have discussed." [628]

Now, you had discussed the sales plan?

A. Yes, that is right.

They were going to sell acreage to the public. A certain percentage, I believe, was to go toward drilling the well. Go ahead ask me the questions.

Q. "No. 1"—that is the holding company—"will enter into an exclusive contract with No. 2", which is the sales company, "providing for the sale and distribution of all of the holdings of No. 1"—that is the leases. That is the holding company was to hold——

A. (Interrupting) That is right.

Q. The oil company or the sales company was to be the exclusive agent?

A. Yes, that is right.

Q. You remember discussing that phase?

A. I remember that.

Q. "On the basis of 60% of the selling price to No. 2"—That is the sales company?

A. That is right.

(Testimony of H. Harry Meyers.)

Q. They were going to get 60%, and 40% was going to go to the corporation, that held the leases: 60% to the sales company and 40% to the holding company. Do you remember that?

A. I think those figures are right. I am not quite sure.

Q. And originally it was agreed that out of the 40% that the corporation got,—that is what the holding company was, wasn't it? A. Yes.

Q. A corporation? A. Yes.

Q. That the Corporation would agree with No. 3, that [629] was the Development Company, doing the drilling, to advance to them an amount not to exceed 62½%? A. 62½%.

Q. Of what they received?

A. That is right.

Q. That came out of the sale of the leases?

A. That is right.

Q. The lease money was to be used for the drilling of the well? A. That is right.

As to the statement in the agreement, "It will be necessary in the conduct of the deal, to realize finances to carry on the work until it shall be self sustaining through sales." I just do not recall what transpired relative to that.

Q. Don't you recall that it was discussed that loans should be arranged,—“the financing shall be arranged by loans to No. 2”—that is the sales company—“which shall be evidenced by their corporate note to the party making such advances, with the understanding that all such notes are to be retired

(Testimony of H. Harry Meyers.)

in full, with interest, before any division of any profit to stockholders''?

A. I even can't recall that. I left that in the hands of Mr. Black, who was my attorney.

Q. Well, you put up how much money?

A. I don't know whether it was \$5,000 or \$10,000. I don't remember which.

Q. As a matter of fact, it was \$5,000, two \$5,000 checks, isn't that right? A. I don't know.

Q. Handing you Defendant's 199 and 198. You put up two \$5,000 checks? [630]

A. One to the Atkins—two to the Atkins Corporation.

Q. Both of them——

A. (Interrupting) These are my checks, March 26, that is right.

Q. Now, one of those checks was a loan to the Atkins Corporation, was it not, for their share in the original \$20,000?

A. I am not quite sure about that, Mr. Hile.

Q. Don't you recall anything at all about it?

A. Well, not a great deal at this time. I know that these are my checks.

Q. Well, don't you recall whether or not you loaned the Atkins Corporation \$5,000? Don't you recall how much your own investment was?

A. It was either \$5,000 or \$10,000. I don't remember which.

I do not remember putting up another \$1000 about October, 1934. Exhibit 284 is a photostatic copy of a note from the Atkins Corporation to me for the

(Testimony of H. Harry Meyers.)

\$5,000 of one of my checks. Exhibits 198 and 199—I recall that now, so originally I put up \$5,000 and Atkins put up \$5,000. I am not sure about \$5,000 for Blank. I got a note of the corporation for my \$5,000 from Markowitz.

I am not quite sure whether I got that note or my attorney got it.

As to the statement in the agreement, “The main purpose of No. 1, will be to procure as much publicity as possible, together with material of every nature that might further the civic interest, as well as supply the selling organization with ammunition”, there may have been such a discussion. I am very hazy in my recollection of any of it. [631] I do not remember the provision that Corporation No. 2, the selling organization, was to have the same stock structure as No. 1. I just do not recall what the setup was at that time. I believe it is right that was the company where the money was to be made.

Q. Don’t you recall you were to have a stock interest in that company as well as the others?

A. I don’t know what interest I had in that. I just took a flier along at that time.

Q. You don’t recall that?

A. Mr. Black took care of that.

Q. Didn’t you discuss, Mr. Meyers, at length with Mr. Markowitz, Mr. Simons and Mr. Roth the terms of this set-up, how it was to operate, to see what you were to get out of it?

A. I talked to Mr. Markowitz a great deal. I never talked to Mr. Simons or Mr. Roth. The only

(Testimony of H. Harry Meyers.)

conversation I had or the only one I had any talk about this proposition was Mr. Black, the attorney, and Mr. Markowitz.

Q. Did you read this Exhibit 8?

A. I might have read it, but I can't even say that I did.

Q. You are not in the habit of signing things you don't read, are you?

A. Well, when you are dealing with people that you are as intimate with as I was with my attorney.

Q. And with Mr. Markowitz?

A. With Mr. Markowitz.

Q. And don't you recall that you were to have a half interest in the Peoples Gas & Oil Company?

A. I remember that I was to receive a certain amount, but to tell you what it is I don't even know right now. [632]

Q. And do you recall that discussion was that this company should be in direct charge of the Atkins Corporation or its agents, that is the sales company? Do you recall that?

A. They were to handle the sales. I know that.

Q. That was Simons and Markowitz, wasn't it?

A. That is right, the sales operation.

They might have discussed the plan for the sales campaign to work in close harmony with No. 1, the holding company, and No. 3, the development company, so as to gauge its activities in keeping with the progress of the development company. I didn't do much discussing about sales. I knew that they would have to make an intensive sales campaign in

(Testimony of H. Harry Meyers.)

order to create consciousness for what they were going to do.

Q. Well, then, of course when you went in originally your idea was to make money out of it, wasn't it, under this agreement?

A. Well, I just took a flier. What benefits I was going to receive out of it I didn't know, for the \$5,000 investment.

Q. Don't you recall that, "Every means of publicity by newspaper, radio and otherwise", and "Enlisting the support of as many civic organizations as possible"—that was discussed? Weren't you to get newspaper publicity, radio publicity?

A. Well, I suppose that was part of their program.

As to the statement, "It is reasonable to understand that we will have to rely as much upon the use of public officials and representative names who will be connected in some advisory capacity with No. 1 and No. 3", I remember that [633] they knew I had vast acquaintances up here. I knew a number of people. I suppose that is what is referred to. I did not go out and attempt to enlist their support. I introduced Markowitz to John P. Hartman and Judge Austin Griffith. I cannot recall who else.

Q. Do you recall that it was discussed that: "It is proposed to make the key note of this sales program one of speculation". Do you recall that?

A. Absolutely.

Q. You recall that very vividly?

(Testimony of H. Harry Meyers.)

A. I do recall that. It was a speculation, because after it started——

Q. (Interrupting) “We intend to stress the speculative side of these sales.”

A. That is a speculation and gamble.

Q. That was the original idea?

A. No question about that. Couldn’t be a sure thing and be an oil well.

I cannot recall the setup of the development company. Mr. Broome was to handle the development company.

Q. Do you recall discussing that: “The operation of this company is a very essential part of our program, as they will have to constantly keep a development program going, consistent with the sales department.”

A. I knew that the Development Company had to go on with the sales. I can’t tell you any more than I told you about that.

Q. Do you recall discussing that “Their purpose is to create as much public interest as possible and to supply No. 2”—that is the selling company—“with all selling material possible and should work very closely with the management of No. 2”—the Development Company—I mean the sale company.

[634]

A. Well, I can’t recollect what was done on that line. I know that naturally——

I was naturally interested, but I did not go into a lot of discussions except with Mr. Black and Mr. Markowitz. I knew Mr. Roth and that is about all.

(Testimony of H. Harry Meyers.)

I had met Dr. Blank once or twice. I don't know just what proportion of the sales was to go to the drilling company. I think under the contract 62½% was to go one way and something another way, but I can't give the details. The contract was entered into. I was vice-president of the development company. I suppose at the time I took part, but was not there very much. It was left to Broome. I was trying to get a contract to build a breakwater at Los Angeles, but did not get it. I came up here for a day or two, but how many times I came up I do not know.

I never understood that the real purpose of the drilling company was to create sales. I do not remember talking with Mr. Duncan in California about this proposition. It is absolutely not true that I told Duncan I was not interested in whether there was oil or not, but was interested in selling. I might have been interested in selling to the extent of \$5,000, but that is a very small investment.

The three companies were originally the Peoples Gas & Oil Company, the sales company, and the Peoples Gas and Oil Development Company, the drilling company. I think it correct that each had 640 shares. I cannot tell whether they were organized at the same time. That was in the hands of Mr. Hartmen, the attorney. Mr. Black might have had something to do with it because I know it was referred to Mr. Black. I talked with Broome, Simons and Mr. Hartman [635] on the setup early in 1934. I suppose they were organized substantially

(Testimony of H. Harry Meyers.)

in accordance with the agreement. I did not pay much attention to that.

I do not remember that 224 shares were to go to Atkins and Broome 160 shares. Broome did not put up any money. He was broke when I took him in. I do not know what Blank and Roth got; I know they were interested. I do not remember that Black got 32 shares.

Q. Well, was he your attorney or the attorney for all of you? A. He was my attorney.

Q. Your attorney?

A. Well, at that time, when the discussions took place down there, he talked to Mr. Markowitz and myself. That is the only ones I know that he did talk to. I suppose he talked to Dr. Blank and to Mr. Roth, but I don't think I was ever present at any of those meetings.

Q. Black didn't put up any money?

A. Not at that time, I don't think. I am quite sure he didn't.

Q. And then 112 shares in each company was issued to *your* for your \$5,000 investment?

A. I think—I don't remember just what it was. I know that I was allowed so many shares.

Q. And issued in each company?

A. I suppose so. I don't remember which.

Q. Well, you remember you did get the shares?

A. I know I got some shares; and to be very frank with you I couldn't tell you how many I did have.

(Testimony of H. Harry Meyers.)

Q. Well, weren't you interested in seeing that you got your full proportion, so that you got your full share under this agreement?

A. Well, Mr. Black was attending to that. [636]

That is the way things stood until April or May, 1935. The stock structure remained the same until 1935. I think it was March. The company made advances for drilling expenses from the sale of leases under this agreement. The representations to the public were that I was backing or guaranteeing the project.

I do not know anything about changing the records in April or May, 1935.

Q. Weren't you present at this meeting in April or May, 1935, where there was Munkres, Whittle, Simons, Markowitz and yourself and Mrs. Phelan, and you had Mrs. Phelan sign a lot of these minutes as secretary of the corporation?

A. Candidly, I don't remember that Mr. Hile, I might have been at a meeting, but I really can't say that I was.

Q. And there was discussed there at length the reason why it was necessary to change these records.

A. There was some discussion, but I don't remember—I couldn't recall any part of that incident. I know that there was a change to be made.

I did not like the first set-up because they wanted me to interest myself by doing a lot of work which I did not want to do and couldn't afford to do. So, I said to Markowitz, "Why don't you and Simons buy the leases and handle the sales and let Broome

(Testimony of H. Harry Meyers.)

and me handle the development company? I am not interested in this except to see that it succeeds, and you get background for what I want." Markowitz said, "Well, that will suit us". Broome wanted a dollar an acre. Markowitz offered fifty cents. I convinced Broome that it was the easiest way to handle this so we agreed upon a price of \$65,000.00, which Markowitz and Simons were to pay to Mr. Broome and to myself. They made out a note for \$65,000 and gave it to us and we turned the leases [637] over to them. They paid the note by advances for drilling expenses. They did not pay anything to me at the time.

Broome was delighted to give up the leases in order to make the test. That was in 1935. Mr. Simons and Mr. Markowitz gave Mr. Broome and me a note for \$65,000.00. I am not sure whether it was their personal note or the note of the Peoples Gas and Oil Company. My attorney in Los Angeles suggested the plan. He said, "Let the holdings that you have revert back to the Peoples Gas and Oil Company or to the Corporation. Let them turn back the Development Company stock to you, and it is a simple matter of handling the deal."

So that is the way it was done.

I gave up the stock in the Peoples Gas and Oil Company, which company was doing the selling, and which company was to get part of the proceeds, and all I kept was the Development Company stock, for just an interest in oil, if any came in. [638]

Then instead of just guaranteeing the drilling

(Testimony of H. Harry Meyers.)

I undertook to do it personally with my own funds, absolutely. I was back of it. It didn't make any difference, anyway. I assumed the burden without prospect of recompense except in the event of oil, because I did not want to be bothered or mixed up with any selling operation. I never sold a share of stock in my life.

Q. You did take part in the selling campaign by taking part in the salesmen's meetings, public and private meetings?

A. I was in there to see how they were getting on. I was greatly interested in the programs that they had, naturally.

Broome spoke time and time again at the meetings, but he was not trying to sell leases from the platform. He was trying to enlighten the people on the program. First he would show pictures of drilling oil wells in the south. Then he had the geology and then he gave a talk on what we were doing and trying to do. It was designed to interest the public. "Whether it had any effect upon the sale of leases or not—I suppose it did because there were a lot of leases sold." "I think it would help, naturally. But why not enlighten these people? They were interested; they were all my partners in the thing." I told Markowitz and Broome never to tell anything to the public but the facts. I never took any action on any misrepresentation because there never was a misrepresentation to my knowledge and belief.

I was never represented to be the builder of the Golden Gate Bridge. I heard a few people last time

(Testimony of H. Harry Meyers.)

get up here and make statements to that effect, which were absolutely [639] untrue. I made a speech and told them I was not a millionaire. I can't give the date. I have heard the remark that I was worth \$50,000,000. Why should I counteract anything like that? That was not helping to sell leases. I never did pay one dollar for the leases. Broome told me that it represented a cost to him of fifty or fifty-five thousand dollars. I did not go into details about it. All I wanted to know was that he had them.

Q. And he assigned them on April 6, 1934, to the corporation, didn't he?

A. The date I can't recall.

Q. But it was early in April, 1934, when they were assigned?

A. If that is the date, that is when they were assigned, Mr. Hile.

Q. And those leases were never assigned to anybody else, were they?

A. Not to my knowledge, I don't think.

Q. So that Broome didn't assign them to Simons and Markowitz at all, did he?

A. The transaction—I just can't recall the transaction.

I did not attend the meeting of April 27, 1934 covered by the Minutes, Plaintiff's Exhibit 13. I do not remember reading the Minutes. I notice what it says about the \$65,000 transaction. I had made advances to Broome. I do not remember how much, but not anywhere near \$65,000.

(Testimony of H. Harry Meyers.)

Q. Now, look at the date of that Minutes. It is April 27, 1934, isn't it? A. That is right.

[640]

Q. That note was not executed until 1935, in April or May.

A. That I can't tell you without referring——

Q. Well, you know when you got the note if you got one.

A. I got one but I can't tell you just when I got it.

Q. It wasn't in 1934 in April, though, was it early in the deal, because it wasn't even contemplated at that time that there would be such a note issued?

A. That I don't remember, Mr. Hile. I don't know.

The Minutes state, "Mr. Broome stated that he and Dr. Meyers controlled oil and gas leases on approximately 135,000 acres in Grant, Adams, and Franklin counties". He put me in with the play.

Q. All right. Calling your attention to Plaintiff's Exhibit No. 9, I will ask you if that is not the assignment where Broome signed all of those leases, on April 11, 1934, to the Corporation?

A. I don't remember the date but I see there is a record of assignment here.

Q. So you didn't have any interest at all in those leases? They were in the corporation, weren't they?

Mr. Simon: I object to that as being argumentative, if the Court please.

(Testimony of H. Harry Meyers.)

The Court: The objection will be overruled.

Mr. Simon: Exception.

A. Well, I—I certainly was an associate of Mr. Broome's for half the interest there. I don't know the detail of it.

Q. Do you recall this being read: "Mr. Broome said the legal title to said leases, rights to leases, geological reports, were in himself but that the equitable title was [641] in Dr. Meyers?" This on April 27, 1934.

A. He put me in with everything that he had, I know that.

Q. But he had assigned them on April 11, 1934, to the corporation, hadn't he?

A. That I can't tell you, Mr. Hile. I don't know.

I do not recall the statement by Broome in the Minutes that he and Dr. Meyers had expended more than \$65,000 in procuring the rights to the lease and geological reports. I had expended some money. I do not know how much. It was not necessary for me to spend a lot of money on these leases if he owned them. I didn't know very much about the proceedings. Mr. Broome acted for me in the Development Company.

I do not know whether or not I heard the Minutes read as stated on page 90 of Exhibit 13. I never gave it much thought. I depended upon Mr. Hartman and Black, in whom I had confidence.

The records were changed as I told you awhile ago. I do not know whether there was a copy in

(Testimony of H. Harry Meyers.)

the original Minutes of the 60-40 contract. When I came up here they did ask me to sign and I would sign. That is all there is to it. I never really gave it much thought or attention. I think after March or April, 1935 it was said that I was paying for the drilling, but I was back of this from its inception. I think it is right that I had not paid a nickel until July, 1935, but I would have to go on with the operations.

They changed the books to show those drilling costs were charged against the \$65,000 note.

I did get back my \$5,000 on the note. I do not remember whether it was on a check payable to Black, but I got it back.

I do not know much about the merger of the Peoples Gas and Oil Company and the Corporation. Mr. Hartman and Black attended to that. I did very little discussion on this proposition. [642]

I advanced some money to Broome on the original equipment. I do not know how much, from \$3000 to \$5000. I did not get it back. It went into the play. He did not have a dollar when I took him in. I do not know where the checks are for this money. There was cash and checks. I do not know on what bank the checks were drawn.

The cost of the equipment was charged on the \$65,000 note. I did not give Broome money for drilling equipment. It was for other things. The title of the equipment went to the Development Company. I never had the title. The equipment

(Testimony of H. Harry Meyers.)

was selected by Broome, Simons and a man who, I believe, later became the driller.

Simons and Markowitz O.K.'d checks of the Development Company because I asked them to look after my interests. I had known Broome only a short time. I did know that William Markowitz was a very high class man and I could trust him.

The people were told, after the merger, there was no connection between the Peoples Gas and Oil Company and the Development Company. The fact that there was the same bookkeeper and other employees for both did not mean anything.

I remember the meeting when the assignment of the lease accounts to the Development Company was first discussed. I do not remember the date. I was at the meeting. (February 18, 1936.) The increase in the Development Company's stock from 640 to one and half million was discussed. The company owed me \$163,967.00 that I had advanced for drilling, and Broome proposed to convey the equipment to me and issue me a large block of stock in the company in consideration of my continuing to drill the well to 7000 feet unless gas and oil should be reached sooner. If drilling discontinued then the property would revert back to the [643] development company unless the failure was due to insurmountable mechanical difficulty or an act of God. I am hazy as to the cancellation of the one hundred and fifty-three thousand odd dollars, but suppose that it is set forth in what transpired. I could form another company, transfer the equip-

(Testimony of H. Harry Meyers.)

ment to that company, and I would be released from all responsibility to the development company.

We went to the S.E.C. hearing in March, 1936. I think that was the date. Markowitz, John P. Hartman and Dwight Hartman were there. Jorgenson was there. Simons was not there. I was present. Markowitz testified. I asked for the hearing because I had heard there was some criticism. I met Mr. Karr several times. I went to his office and talked to him. I never got much satisfaction from him so I told Markowitz I believed the best way would be to go back and get in touch with Mr. Ross, who I believed, was chairman of the commission, so we appeared. I told my story to the commission and Markowitz outlined what he was doing.

Markowitz said I had brought him up, and I did. He was not much interested at first.

Markowitz talked to the commission. I suppose he talked twenty minutes. John P. Hartman talked. There was a Congressman, Knute Hill. I do not remember whether Markowitz at the meeting said that they had bought the acreage for me for \$65,000 and had paid \$10,000 in cash.

I do not know whether he said he had given \$20,000 first and various other sums, but I made a great many advances, and loaned to Markowitz "quite some sums of money". That was before I ever entered into this proposition. I helped him out.

I do not remember his saying, "No, Meyers never [644] helped us out, so why should I help him out."

(Testimony of H. Harry Meyers.)

I do not recall answering "No" that I was not obligated to drill to any depth. Legally I was not, but morally I was obligated and I took that as the same thing. I explained to them that I was back of the project as far as digging that well was concerned.

I believe I made the remark that I proposed to drill until the experts told me there was nothing there; that some had said 4000 feet, others 6000 feet.

I remember being asked whether any funds came from the Peoples Gas and Oil Company and I said, "They never gave me a quarter." They never gave me a quarter. I made trips for Markowitz. He may have given me a company check to pay the expenses. I am not sure whether the company paid my expenses back to Washington for the hearing.

I have always said that I would go on; that I might die, but I thought I was pretty good for awhile and did not think I would die unless the money ran out, and unless I was killed, or something like that happened, that well would be dug.

I told them I was going on six or eight or ten thousand feet until the experts told me that there was no chance and then I would have done what I had agreed to do. I did say something to the effect that I would go on with the well; that I was more concerned about all the partners that came into it and "Do you think I would quit these people?" "It is a religion, not a movement."

Jorgenson was made a member of the Board. I think there were three stock holders at that time.

(Testimony of H. Harry Meyers.)

Miss Carlson, Clerk, had a nominal share. The others were Broome and I. Miss Carlson was Secretary later of the Peoples Drillers; that was formed to drill and nothing else. [645] It was formed by Broome and me. Broome and I composed the development company in effect, but I do not remember just why we wanted to transfer the drilling equipment from ourselves as the development company to ourselves as Peoples Drillers. I had no title to the equipment, but I had paid for it and owned it. We got the equipment over from the development company to ourselves as the drillers, which was to go ahead and drill and if there was some unsurmountable difficulty we would keep the machinery, but if the Peoples Drillers failed to drill it would go back to the development company. That company did drill from June to October 15, 1936.

On October 15, 1936, the Peoples Gas & Oil Company turned over the uncollected contracts and the Drillers turned over the equipment to the Development Company. Mr. Markowitz suggested it first when he told me I was getting old and might pass out any time; and also because of the suggestion made by Mr. Ross to the effect that the Peoples Gas & Oil Company should help to drill the well. So I agreed because I said "Anything we can do to protect these people, I am for." Then we received a proposal from the Development Company.

I understood the well, at that time was fifteen or twenty degrees off the perpendicular. The well was jammed. It had been dynamited. Mr. Zandmer

(Testimony of H. Harry Meyers.)

had been recommended by Mr. Cohn of the State License Department. He dynamited the well without consulting me and over the protest of the drillers.

Under the contract to the Development Company the drillers company could keep the equipment if insurmountable difficulties were encountered. Broome reported the condition of the well to the Board of Directors. I told a great many people myself what happened. The directors also knew that the well was off fifteen or twenty degrees.

It was I who insisted if the development quit drilling the equipment was to return to me and I would have the option of continuing drilling. There was no written obligation. I had the option. They never asked me for a contract in writing or for life insurance, or any guarantee. [646]

Q. And wasn't the reason why you wanted the opinion to come in doing the drilling was because if the Development Company failed to drill, that then the drilling equipment would come back to you and the company free and clear?

A. It was my equipment. Why wasn't I entitled to it?

Q. You didn't have the title to it, did you?

A. As far as the title was concerned, I was the driller; I was the Development Company.

That was October 16, 1936, I think that was the date. In September, 1936 I had an audience with Swenson, Zimmerman and Rich. I do not remember

(Testimony of H. Harry Meyers.)

the date. I do not remember telling them that I was going down to 7000 feet. Why should I assure an investigator what I was going to do?

Mr. Swenson asked if I had fifty million dollars. I think I responded with the remark, "If you had the difference between fifty million and what I have got, you would have a lot of money." I never *make* the remark, "If you had the difference between what I have been represented to have and what I have you would be a very wealthy man."

It is absolutely not true that I said I had carried an election by two-thirds majority and it had cost me \$360,000. I never made the remark that I was not a philanthropist. I do not remember saying my middle name was, "Make a Dollar." I don't think there was any explanation made to Mr. Swenson that I was going to drill to 7000 feet because it had been so represented to the people.

Q. But it is true that you quit drilling less than a month after that conversation, isn't that true; turned it over to the Development Company? [647]

A. That arrangement was carried out.

Q. (By Mr. Hile) My question is whether you quit drilling?

A. I was out of it. I had nothing to do with the drilling.

Q. Did you thereafter ever pay one red cent to anybody for drilling, after that time, October 15, 1936?

A. Not a dollar.

I did not know until quite awhile later that the collections on the accounts turned over to the de-

(Testimony of H. Harry Meyers.)

velopment company were diminishing. I cannot tell how long afterwards. I just do not remember how many months.

Q. (By Mr. Hile) Did you ever offer to do it, to help them?

A. I never offered to help them; I was never asked at that time.

I was never asked to be on the board of directors. When the change was made it was out of my hands. I do not remember whether I authorized Markowitz to tell the board, "I am authorized to speak for Mr. Meyers and we prefer not to be on the Board of Directors."

Q. You could have still given the Development Company, after the accounts receivable were assigned, money as you [648] had furnished before, couldn't you? There was no reason why you couldn't?

Mr. Simon: I object to that as argumentative.

The Court: Objection overruled.

A. Why should I give them money? They had put me out of the picture.

During the discussion of the Dickason suit I remember being present at one meeting in Hartman's office. A number of people were present. I do not remember a proposal that Mr. Jorgenson should sign a pleading or agree to the pleading asking for a friendly receiver in the state court.

Q. And didn't you tell Jorgenson that he must sign this paper so you could have a friendly receiver?

(Testimony of H. Harry Meyers.)

A. I certainly did not. Why should I have a receiver? I didn't owe anything. I had paid everything. Why should there be a receiver appointed?

Q. That would end your obligation, wouldn't it?

A. Why should I do that? I was drilling the well.

Later in the receivership I made a claim for the return of my equipment. "If I didn't make it, that was meant, exactly, that I was to get my equipment back so I could go on with the drilling".

Q. So the Court wouldn't let you go ahead and finish the drilling there and put your money in? Is that right?

A. That is right.

Q. He refused to do it?

A. That is right.

Mr. Egan and Mr. Donnelly (when they came down to Los Angeles) did not ask me to furnish the money for the drilling. Donnelly asked me to join him. He wrote me a letter and I told him I would write a letter in response, [649] which I did as of April 6, 1938.

Q. And in that letter you relied upon the contract, did you not?

A. Exactly.

Q. Between the Peoples Drillers and the Development Company?

A. That is right.

Q. And not requiring that you drill?

A. That is right. That was my option.

Q. In other words, you had an option you could exercise if you did not want or did not have to?

A. Exactly.

Q. You did not say to him: I have promised the

(Testimony of H. Harry Meyers.)

people I would do this. You have asked me and I will do it.

Mr. Simon: I object to that on the basis the letter is in evidence and is the best evidence of what was said.

The Witness: That is the best evidence, just what I wrote in there.

I never went before the Court and offered to do further drilling if the equipment was returned to me.

Q. You were trying to get the equipment back on the technical ground that the Development Company had failed to drill, and you were therefore entitled to the equipment back? Is that right?

A. Why wasn't I entitled to it back?

The Court: You will have to answer the question.

The Witness: I beg your pardon.

A. I wanted my equipment; I wanted to live up to the terms of that contract that I made with them.

Q. (By Mr. Hile): But you did not, concurrently, offer to continue with the drilling, complete the drilling?

A. I wanted that equipment.

[650]

Q. Yes, you wanted the equipment?

A. Exactly.

Regarding Defendant's Exhibit A-39, A-40 and A-41, the initials "E. C." stood for Edith Carlson, who was a stenographer and secretary of the Drillers Corporation.

(Testimony of H. Harry Meyers.)

At the time I turned the equipment over on October 15, 1936, I had spent about \$192,000.00 exclusive of the \$65,000.00 transaction.

Q. And on January 10, 1936 you reported, did you not, to the people in "Peoples Progress", which is Government's Exhibit 35 in evidence, that you were willing to expend up to \$500,000.00, if necessary, to finish that work.

A. To make that test.

Q. Is that right? Were you prepared to do it?

A. I was.

Q. And on October 15, 1936, how much money did you have?

A. Well, I can't tell you offhand, just what I had.

Q. Where did you have it?

A. I had it in the safety deposit boxes.

I had about \$250,000 in money. I had a commission coming from McClintock & Marshall of \$300,000 and from the John Roebling Company of about \$160,000. I settled with the Roebling Company for about \$20,000. From Marshall & McClintock I received nothing. I had no other income [651] than shown on my income tax returns for the years 1932 to 1939. Except for about \$17,000 from Roebling my only income was from Strauss.

It is not true, as Mr. Fisher testified, that he told me about October, 1934, that Broome had told him he was not a geologist and had never brought in any successful oil fields anywhere. that he had tried to promote one field in Kentucky and that "didn't

(Testimony of H. Harry Meyers.)

pan out"; that he had spent the greater part of his life in selling city lots in various places; that at one time he was a violinist in Detroit; that he was disgusted because he had been promised he would make a lot of money, but had not received it. I do not recall saying to Fisher that if he had anything to say he should discuss it with Simons; that Fisher said it was a serious matter and that Markowitz had threatened him if he made trouble. I never heard such statements and I did not say to Fisher; "If Markowitz tells you anything you had better take heed because he usually means what he says."

Mr. Coles compiled exhibits 99 and 100. He got the information from me. I had the \$400,000 in cash in the safety deposit boxes. I don't think I told him the first time, (exhibit 99) that I had that cash in the safety deposit vaults. I did not have to make a statement. Later I took him down and showed him I had a lot of money. It was in \$1000 and \$500 bills.

I don't think Blank was up here until he was called before the Grand Jury or something. Roth was indicted. I do not know whether he came up here or not. Einzig was a dentist, relative of Simons. He never participated. [652]

I did not take the stand in the last trial. Bert Fisher testified, Mrs. Phelan, Christensen, Swenson, Munkres, and Rich. I talked over with Mr. Simon the matter of taking the stand, but Mr. Vanderveer was chief counsel and nobody else had much to say.

(Testimony of H. Harry Meyers.)

Re-Direct Examination

By Mr. Simon:

Relative to employment of Mr. Zandmer I asked Mr. Karr to nominate a geologist and petroleum engineer, according to defendant's A-133. He said he couldn't do that, that request was made in good faith. I discussed it with Harry Huse and Mr. Cohn, his assistant, and Cohn advised me to get Zandmer.

With reference to plaintiff's 99 and 100, Coles asked me to furnish a statement to show I had enough money to drill the well, and #100 he asked me to furnish a complete list.

In January, 1936, when I made the statement that I would complete the drilling, even if it should cost \$500,000, or more, I believed absolutely I had enough assets to finish it.

I had an arrangement with Herbert Noble, Sr. for a commission of 3% from the John Roebling Company. It made about \$165,000. In January, 1936 I would not have discounted it for ten percent. Likewise I had \$330,000 coming from McClintock-Marshall on their approximately \$11,000,000 contract. I had no contracts with either. It was a gentlemen's agreement. They would not pay after I was indicted.

I do not believe Fisher testified in the previous trial about the conversation with Broome.

Mr. Vanderveer in the former trial gave as reason for not having the defendants go on the stand that the government had no case. He said "It is

(Testimony of H. Harry Meyers.)

not necessary. The [653] Government had never proved a case." [654]

A. J. ZIMMERMAN

recalled in rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Hile:

I was present at the Olympic Hotel on September 19, 1936, when Mr. Swenson had a discussion with defendant Meyers. Mr. Swenson told Meyers that representations had been made in connection with the sale of leases that Meyers was the builder of the Golden Gate Bridge. Meyers answered that he had been responsible for building the bridge; that he had been instrumental in getting an election in six counties in California and had carried the election by two-thirds majority and it had cost him \$360,000. Mr. Swenson asked Meyers if he had paid that amount himself and he answered, "Who else?"

Mr. Meyers at that time said he was not a philanthropist, but that his middle name was, "Make a Dollar". He said he was going to finish the well if he had to go to 7000 feet.

Cross Examination

By Mr. Simon:

Q. As a matter of fact, what Dr. Meyers said to you was that his activities in connection with the

(Testimony of A. J. Zimmerman.)

promotion of the bridge had cost \$360,000.00. Isn't that right?

A. No. As I recall, he stated that he had been instrumental in putting over the Golden Gate Bridge, and that in so doing he had gained the support of two-thirds majority of six counties, on which he had spent approximately \$360,000. And in reply to the inquiry that Mr. Swenson made, "Was that your money?" or "Did you spend that money", in substance, and he said, "Who else?"

[655]

P. V. DOUGLAS,

Recalled in Rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Sager:

I have testified previously.

I know Albert Olson and brought leases from him. When selling leases to me he told me that Broome was a noted or famous geologist, who had geologized the Frenchman Hills District.

At the same time he said Meyers was a millionaire and that Meyers was the builder of the Golden Gate Bridge. [656]

CHARLES W. DUNCAN,

Recalled in rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Hile:

I have lived in San Francisco since 1902. I became acquainted with Meyers' general reputation for being a law abiding and respectable citizen in 1930 and since that time. His reputation is bad.

[657]

HARRY HUDSON,

A witness called in rebuttal, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at Seattle. I attended a dinner of the Cascade Tunnel Association at the Athletic Club about July 14, 1933. Joseph B. Strauss was the principal speaker. If I remember correctly he said nothing about Meyers' connection with the Golden Gate Bridge.

Cross Examination

By Mr. Simon:

John P. Hartman was there, and I think Judge Austin Griffith and Calvin Phillips. I do not know about A. S. Elford or Edgar Snider. I was not a member of the association. John S. Hudson, the president of the association is my brother and he was there.

(Testimony of Harry Hudson.)

I answered before that Strauss did not say anything about Meyers in connection with the Golden Gate Bridge. He spoke of him as his friend, but he did not say anything, as I recall it, in connection with the Golden Gate Bridge.

I believe John Dore, the mayor was there. He spoke a minute or two and lauded Strauss for the work he had done on the Golden Gate Bridge, and of course, all lead up to the building of the Cascade Tunnel. That was the object of the meeting. Mr. Strauss, the principal speaker, dwelt principally on the engineering feature of it. [658]

JOHN HUDSON,

A witness called in rebuttal after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

My name is John S. Hudson and I live in Seattle. I have been president of the Cascade Tunnel Association since 1930. I was present at a dinner at the Washington Athletic Club in 1933, at which Mr. Strauss spoke, and at which Mr. Meyers was present. Mr. Strauss spoke of the engineering features of the proposed tunnel. I don't recall anything having been said in connection with the Golden Gate Bridge.

(Testimony of John Hudson.)

Cross Examination

By Mr. Simon:

The dinner was given by Dr. Meyers. I had had correspondence with Dr. Meyers over four or five years about the tunnel and he attended several meetings of the general association. I also talked to Meyers about it when I was in San Francisco. [659]

VICTOR S. KNUTSON,

A witness called in rebuttal, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live in Chicago, Illinois. I am in the financing and loan business. I was in San Francisco in 1927 and met defendant Meyers there. The first time I met him to talk with him was in the first week of February, 1927. I was Vice-President and General Manager of the Chew Engineering Corporation. I was associated with Mr. Ross J. Batey, Chairman of the Executive Committee of the Inland Steel and its biggest stockholder. We had an application in for building a bridge across San Francisco Bay.

(Objection to further testimony sustained by the court on the ground that the Bay Bridge subject was a collateral issue and impeachment of defendant's testimony on that subject not proper.) [660]

ALBERT A. RHINE,

A witness called in rebuttal, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at San Francisco. I am 55 years old and have been in the real estate business since 1906. I know defendant Meyers and I know his general reputation in San Francisco for being a law-abiding and respectable man. The reputation is bad.

I know his reputation for truth and veracity. It is bad.

Cross Examination

By Mr. Johnson:

I have a real estate business of my own. At times I have had as many as thirteen salesmen working for me. At the present time I am alone. I had dealings with Meyers. [661]

RAY W. TAYLOR

A witness called in rebuttal, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I live at San Francisco and have lived there 42 years. I have been a newspaper man most of the time. For 20 years I was city hall reporter for the "Examiner" of San Francisco.

It is rather difficult to say how many people I

(Testimony of Ray W. Taylor.)

know. I suppose I know a good many thousand. I know defendant Meyers. I know his reputation in the City of San Francisco after February, 1927; from 1927 to the present time. It is pretty terrible; bad.

I have known his general reputation as to being a law abiding man during the same period of time. That reputation is bad.

Cross Examination

By Mr. Johnson:

I have never known of his being convicted of any crime in San Francisco or being charged with any crime, or being arrested. My present business is public relations work. I am employed for myself located at 555 Post Street, San Francisco, California.

I was employed as a newspaper reporter until about 1930 or 1931. I am the man who wrote the article which was introduced here as Exhibit 283.

I am acquainted with Fred Ascola. I know Judge Harris by sight and Mr. Schmulowitz. I think their reputation is good enough. [662]

All of the testimony having been offered and both sides having rested, the following Motions were made:

Mr. Simon: If the Court please, at this time, the Government having rested, the defendant renews each and all of the motions which were made on behalf of the defendant at the close of the Government's case in chief. That is to say the defendant, H. Harry Meyers, moves for a directed verdict of

not guilty on count 1 of the indictment for the reason and upon the ground that there is no legally sufficient competent evidence upon which a verdict of guilty upon the said count could be sustained, or upon which the jury might properly find the defendant, H. Harry Meyers guilty upon the said count.

The Court: The motion will be denied and exception allowed. And I am wondering, for the purpose of expedition, and yet not in any way prejudicing your record in this matter, if you could not make a general statement, and if there are any grounds in addition to the grounds that were advanced at the close of the Government's case, you may state them.

Mr. Simon: May it be stipulated then, between counsel for the Government and myself, that a similar motion may be regarded as made separately as to each count in this indictment upon the grounds stated as to the first, and that each of the motions are overruled and an exception allowed?

The Court: I do not know that the Court wants the record to show that he stipulates with the defendant; but I will accept the stipulation, and if anything additional has developed in the course of the defense, that has been brought in the case, then I want you to bring it to the Court's attention and I would be glad to hear from you now. And, if not, I will accept the stipulation upon those grounds [663] upon which you based your motion for a dismissal, for a directed verdict, or the same grounds

that were advanced at the time the government rested its case in chief.

Mr. Hile: I have no objection to such stipulation.

The Court: And the motions will be **denied collectively** and separately, and an exception allowed in each instance.

Mr. Simon: Now, may I move similarly, the same motions for the withdrawal of particular issues that I noted at the time of the close of the Government's case? That is your Honor will recall I moved to withdraw from the consideration of the jury the allegation of fraud set forth in paragraph 1 on page 4 of the indictment for the reason and upon the ground that there is not sufficient evidence upon which to submit the allegations of fraud to the jury.

The Court: I forgot the reference to the indictment.

Mr. Hile: It has to do with coming up to the state of Washington for the purpose of——

Mr. Simon: There was, literally, I think, no evidence that any representation was made that the defendants had "come up to the State of Washington from California for the purpose of developing the natural resources of the state; that they were proud to have become citizens of this state to develop its oil resources; that the state of Washington had oil-bearing fields as well as California, and that they had come up to open them up; that the people of Washington had for too long been obliged

to pay tribute to California for their oil; that the time had come to quit sending their money to that state; and that said defendants had come to help the people of Washington to keep their money at home by developing their own natural resources, whereas in truth and in fact, the said defendants there and then well knew that the defendants came from California to the State of Washington [664] because they believed conditions in the state warranted an oil development——”

The Court: The motion will be denied and exception allowed.

Mr. Simon: I renew the motion similarly to withdraw the allegations of paragraph 3 on page 6 of the first count of the indictment.

The Court: The motion likewise will be denied and exception allowed.

Mr. Simon: The same with reference to paragraph 4.

The Court: The same ruling and exception.

Mr. Simon: The same with reference to paragraph 5.

The Court: The same ruling and exception allowed.

Mr. Simon: The same motion with reference to paragraph 6.

The Court: The same ruling and exception allowed.

Mr. Simon: May I say with reference to paragraph 6, our motion is amplified upon the ground that the defendant, William A. Broome, having been acquitted of the charge, and he being the per-

son who was primarily acquainted with the truth or falsity of those allegations, we regard it as established by the verdict of the jury in the former trial that there is no proper basis for the submission of the allegations of paragraph 6 to this jury.

The Court: Yes. I have given that consideration.

Mr. Simon: Thank you. Exception to your Honor's ruling as to 6 and the same motion, if the Court please, as to paragraph 7.

The Court: It will be the same ruling and exception will also be allowed.

September 15, 1943.

J. CHARLES DENNIS,
United States Attorney.

Copy Proposed Bill of Exceptions Received.

JOHN S. SWENSON,
Special Attorney. [665]

Whereupon, after arguments had been concluded in behalf of the Government and the Defense, the alternate Jurors were excused and the Court proceeded to instruct the Jury as follows:

INSTRUCTIONS

The Court: Ladies and gentlemen of the Jury, the Court will instruct you as to the principles of law applicable to this case. It is important that you pay close attention to these instructions, because you will not have them available during your deliberations, and you will have to depend upon your

recollection concerning the law as stated to you in these instructions.

It is your duty to accept the law applicable to this case as given to you by the Court in these instructions. The responsibility of advising you concerning the law is one resting entirely upon the Court, and you are bound under your oaths to accept the law as it is given to you in these instructions.

Upon you individually and collectively rests the responsibility of deciding the facts in this case; and upon your decision of the facts in the case you must apply the legal principles announced by the Court in these instructions. But as to the facts, what the evidence proves, what weight to give to the testimony of the various witnesses, particularly what inferences to draw from the facts and circumstances proved, that is exclusively your function. In respect to that you are independent, controlled neither by any opinion that the Court may have concerning the guilt or innocence of the defendant, nor by the arguments of counsel, although you have listened to them with respect and are entitled to any aid that counsel can give you in summarizing, recalling [666] and explaining the testimony and the facts.

It is for you to determine the facts in this case, and the responsibility is upon you. It is a duty which you can perform only by an honest determination and by your best judgment, reached after deliberation among yourselves from a common-

sense standpoint and a responsible viewpoint taken by you all.

You are here for the purpose of trying the issues of fact that are presented by the allegations in the indictment and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial and the law as given to you by the Court. The law will not permit Jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand and do so demand and expect that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give your conscientious judgment that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The defendant H. Harry Meyers was charged by an indictment heretofore returned in this court by a Grand Jury, together with other persons named therein, with: 1) using the mails to defraud, in the first ten counts; 2) a violation of the Securities Act of 1933, in the next two counts; 3) conspiracy to violate these two statutes in the thirteenth counts.

The indictment as drawn and as it still stands charges nine defendants with violation of this law. They are as follows: Joshua F. Simons, Milton Si-

mons, William [667] Markowitz, Samuel Markowitz, also called "Derby" Markowitz, H. Harry Meyers, William Broome, Louis Roth, Isadore Taub and Pat Robkins. Eight of these defendants have been disposed of in connection with a previous trial, and you are not concerned with them, except to ascertain whether they were engaged in a scheme to defraud or a scheme for obtaining money and property by means of false pretenses, representations and promises, in which the defendant Meyers had a responsible part.

As to the defendant Meyers, the previous jury disagreed and he is now before you on re-trial. In order to sustain a conviction against him now it is necessary for the Government to prove to your satisfaction and beyond a reasonable doubt that he was associated with the other defendants, or some of them, in the operation of a scheme to defraud or a scheme to obtain money or property from investors in the Frenchman Hills leases by means of false pretenses, representations and promises as alleged in the indictment.

In this connection you are instructed that the indictment herein is a mere charge or accusation against the defendant. It is not any evidence of the defendant's guilt. No juror in this case should permit himself to be to any extent influenced against the defendant because or on account of such an indictment being on file. It is your duty and responsibility as a jury to decide whether the defendant is guilty or not guilty of the offenses charged in the indictment; and in arriving at your

verdict you will give consideration to all of the evidence submitted to you in this case. You should not consider as evidence any statement as made is made as an admission or stipulation concerning the existence of the fact or facts. [668]

You are not to consider as evidence or law any argument, comment or suggestion made by counsel during the trial of this case. Such statements, arguments, comments and suggestions are not evidence and must not be considered as such by you.

You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the Court. Such evidence is to be treated as though you had never heard it.

You are to decide this case solely upon the evidence that has been produced before you and the inferences which you may deduce therefrom as stated in these instructions, and from the law as given to you in these instructions.

The indictment in this case consists of thirteen counts. Counts one to twelve inclusive are referred to as the mail-fraud counts. Count thirteen is the conspiracy count.

Counts one to ten inclusive accuse the defendant of using or causing to be used the United States mails in the execution of a scheme to defraud, which scheme it is alleged he, together with the other named defendants in the indictment, had devised. Counts eleven and twelve charge the defendant likewise with using the mails to defraud, but come under another statute which makes it a crime "for

any person in the sale of any securities, by the use of the mails directly or indirectly, 1) to employ any device, scheme or artifice to defraud". Count thirteen accuses the defendant, in association with others named in the indictment, of having conspired to violate both of the above-mentioned statutes, and to have thereafter done certain acts to effect the object of such conspiracy; and the alleged overt acts charged in count thirteen are numbered 1 to 8 inclusive. [669]

The scheme and artifice to defraud, of which the defendant is accused, of obtaining money and property by means of false and fraudulent pretenses, representations and promises from a class of persons whom he and those associated with him might induce to invest in one or more oil-promotion enterprises in the state of Washington, such persons being designated in the indictment as "Investors", is alone stated or described in count 1 of the indictment, the allegations concerning which are adopted by reference in counts 2 to 12 inclusive; and this description will be found on pages 2 to 18 of the indictment.

The scheme and artifice and alleged false representations and promises described in count 1 of the indictment briefly are to the effect that the defendants named in the indictment would, in the state of Washington, acquire and procure the assignment to themselves and to corporations organized and controlled by them of certain oil and gas leases, covering approximately 135,000 acres of lands in Grant, Adams and Franklin Counties, in the state of

Washington, and they would proceed to organize, control and operate on the basis thereof four inter-allied corporations, to-wit: Peoples Gas & Oil Company, Peoples Gas & Oil Corporation, Peoples Gas & Oil Development Company and the Peoples Drillers, Incorporated. And through said corporations as instruments of operation they would conduct a campaign for the sale of the said Investors of small fractional parts or units of such leases and they would collect from the Investors in the aggregate vast sums of money in payment therefor, and they would incite and entice the said Investors into purchasing said fractional parts or units of said leases by alluring, misleading, and false pretenses, representations and promises skillfully and adroitly calculated to [670] arouse in the said Investors hopes and expectations of profits from such investments far beyond the limits warranted by the existing conditions.

In order to enable them to sell such units or fractional parts of the leases to many thousands of small investors and to collect from said investors several million dollars in payment therefor, the defendants would start and continue to drill a well in said district, and they would sell such units or small fractional parts of said leases on false and fraudulent pretenses, representations and promises as to the motive and purpose on the part of said defendants in coming from the state of California to the state of Washington in such enterprise; as to the part the said defendant, H. H. Meyers, was taking therein and as to the alleged standing and experience of the

defendant Meyers in the financial and business world, his previous accomplishments and great public enterprises and his alleged great wealth, his guarantee that he would, out of his own personal funds, pay all expenses of drilling said well; as to the motive and purpose in offering the leases for sale only to citizens of the state of Washington; as to alleged acreage holdings of the said defendants adjoining producing wells in other districts; and as to an alleged advisory board of eminent geologists and petroleum engineers, under whose advice the said defendants claimed to be operating; as to alleged experience and qualification of the defendant, William A. Broome, as a geologist and petroleum engineer; as to the showings of oil and gas alleged to have been encountered; as to prospects impending for striking oil or gas and making said investors wealthy; and, generally, as to the great desirability of an investment in a small unit or fractional parts of said leases. A further detailed and particular [671] description of all these false representations and promises and additional alleged false representations in the nature of a promise that the net proceeds of the sale of leases would be used for the development of the Frenchman Hills area, and other districts in the state of Washington, will be found on pages 4 to 18 of the indictment, all of which false representations and promises it is alleged in the indictment that the defendants well knew to be false.

The indictment in this case contains certain allegations which now, at the end of the trial, the

Court believes should be withdrawn from your consideration for one reason or another, as a matter of law.

On page 9, beginning with line 28 and going over on page 10 down to line 6 of that page, the allegation contained in this part of the indictment has been withdrawn from your consideration. You will disregard it as to the defendant now on trial; and these allegations have been obliterated from the indictment.

There is also certain material contained in the indictment beginning with line 27 on page 12 and running over to page 13 on line 11 of that page that has been withdrawn from your consideration and obliterated from the indictment and you will give no consideration whatever to any matter therein contained and utterly disregard this allegation.

The same situation prevails as to the allegations contained on pages 15 and 16 of the indictment and running through to line 12 on page 17. These have been withdrawn from your consideration and have been blotted out of the original indictment, and you will give no consideration to any testimony in any way in regard to this matter contained in the indictment. [672]

Counts 11 and 12 of the indictment allege that the defendants named therein "did, in the sale of securities by the use of the United States mail employ the scheme and artifice to defraud described in count 1 of the indictment."

In the conspiracy count it is alleged that the defendant conspired to violate the herein described

statutes of the United States by employing the scheme and artifice to defraud described in count 1 of the indictment. Each of the first ten counts of the indictment, other than count 5, charged the defendants of having for the purpose of the executing of the scheme and artifice to defraud, made the basis of such counts, in attempting to do so, caused to be delivered by mail at a place within the jurisdiction of this court a described letter. In count 5 the mail matter is described as a publication entitled "Peoples Progress."

In counts 11 and 12 the mail matter which the defendant is accused of having caused to be delivered consists of certain described letters; and in count 12 a described inclosure.

In the conspiracy count the first three overt acts alleged relate to the causing to be delivered by mail of letters in the Southern Division.

The fourth overt act relates to the causing to be delivered by mail in this Division of a receipt for \$5.00.

Overt acts 5 to 8 inclusive relate to acts alleged to have been done by the defendants at Seattle, in the Northern Division of this District.

Over act number 5 relates to a registered letter.

As to certain overt acts in the conspiracy count of the indictment, which are found on page 56, numbered 6 and 7, these have been withdrawn from your consideration, obliterated from the indictment, and you will give no consideration to them. [673]

The defendant, H. Harry Meyers, has heretofore entered a plea of not guilty to all of the various

counts contained in the indictment. This plea of not guilty puts in issue each and every material allegation of the various counts in the indictment.

I instruct you that the defendant is presumed to be innocent of any of the crimes with which he is charged, and that presumption attaches to and continues with him throughout all stages of the trial, and throughout all stages of your deliberations until it has been met and overcome by evidence in the case beyond a reasonable doubt. This presumption is a part of the law of the land, to which the defendant is entitled; and unless this presumption is overcome by evidence in the case beyond a reasonable doubt, you must acquit the defendant.

The fact that an indictment has been returned against the defendant, as heretofore stated, constitutes no evidence of his guilt. This is merely a formal instrumentality provided by the law as a means of bringing a defendant to trial and subserves such purpose alone. His guilt must be proven independently of that. In arriving at a verdict, therefore, you will give no consideration to the fact that the defendant has been indicted, as tending in any way to establish his guilt.

The presumption of innocence goes with the defendant throughout the whole trial and until it has been met and overcome by evidence beyond a reasonable doubt. This presumption of innocence outweighs and overbalances all suspicious and suppositions and can only be overcome by proof beyond a reasonable doubt.

The Jury are instructed that the burden is on the Government of proving every fact material and necessary to [674] a conviction by competent evidence beyond a reasonable doubt. It is not sufficient that the Government should prove these facts by a mere preponderance of the testimony. Nor, on the other hand, is it necessary that it should prove them conclusively in such manner as to leave no room for any doubt whatever. Very few things in the whole domain of human knowledge are susceptible of absolute proof. We can have a moral certainty or a reasonable certainty which may vary in degree; but rarely an absolute certainty. The expression "reasonable doubt" means in law just what the words imply, a doubt founded upon some good reason. It must not arise from a merciful disposition or a kindly sympathetic feeling or a desire to avoid performing a disagreeable duty. It must arise from the evidence or lack of evidence. It must not be a mere whim or a vague conjectural doubt or a misgiving founded upon mere possibilities. It must be a substantial doubt such as an honest, sensible and fair-minded man might with reason entertain, consistent with a conscientious desire to ascertain the truth.

You must use your common sense as men and women of experience, possessing some knowledge of worldly affairs, and if after examining carefully all of the facts and circumstances in this case you can say and feel that you have a subtle and abiding conviction of the guilt of the defendant, then you

are satisfied of his guilt beyond a reasonable doubt. If you have not such a conviction, then you should acquit him.

The statute upon which the first ten counts of the indictment are based provides in part: "Whoever shall, for the purpose of executing such scheme or artifice, or attempting to do so, place or cause to be placed any letter, [675] postal-card, package, writing, circular, pamphlet or advertisement in any post-office or station thereof or street or other letter box of the United States, or authorized depository for mail, to be sent or delivered by the Post Office establishment of the United States, or who shall knowingly cause to be delivered by mail, according to the direction thereon, any such letter, postal-card" and so forth.

It is not necessary to the offense charged in these counts that any one be actually defrauded. That is, it is not necessary to such offense that the scheme to defraud be successfully executed. The expression occurring in the indictment, "devise a scheme and artifice" is about as plain as it could be made. "Devise" means to form or to contrive. A man devises a scheme when in his mind he forms a scheme. A "scheme" is a plan. An "artifice" is a crafty, tricky plan. A man devises a scheme when he forms a plan; and he devises an artifice when he forms a crafty, tricky plan. A man who adopts and makes his own a scheme or artifice to defraud already devised by others, within the meaning of this law, thereby devises such scheme or artifice.

In each count of the indictment the defendants

are alleged to have "knowingly and wilfully" done the acts and things of which they are accused. As to the word "Willfully", it means with an evil intent or purpose. Such evil intent or purpose is an essential element of the offense with which the defendant is charged. You can not lawfully find the defendant guilty on any count of the indictment unless you are convinced beyond a reasonable doubt by the evidence of the truth of every material allegation of such count. However, it is not necessary to prove that an offense was committed upon the day alleged in the indictment, if the evidence shows beyond a reasonable doubt that it was committed before the presentment of the indictment and within the statute of limitations, that is sufficient; that is within three years prior to the presentment of the indictment. [676]

This instruction as to the burden upon the prosecution as to every material allegation of a particular count does not mean that in the described scheme to defraud, alleged or referred to in the first ten counts, it was planned by the defendant that all of the false representations and promises therein described were to be employed; but you do have to be convinced by the evidence beyond a reasonable doubt before you can lawfully return a verdict of guilty thereon, that such defendant devised or intended to devise a scheme to defraud by means of at least one of the false representations or promises described or referred to in such count.

The eleventh and twelfth counts charge a violation of section 17 of the Securities Act of 1933,

which provides, among other things, that "it shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, to employ any scheme or artifice to defraud." These counts charge that the defendant employed the scheme to defraud described in the first count in the sale of the security by use of the United States mails. The Security Act makes it a criminal offense to wilfully employ such a scheme to defraud, directly or indirectly, in the sale of a security by use of the mail. And count twelve of the indictment charges that, within the meaning of the law, the defendant wilfully employed such a scheme in the sale of a unit or a fractional part of an oil and a gas lease, which constituted a sale of the security within the meaning of the Securities Act of 1933, to Mr. and Mrs. J. M. and Eric [677] P. Anderson of Tacoma, Washington; and as a part of such employment, they mailed a letter to them dated December 19, 1935 and caused the same to be delivered by the United States mails at Tacoma, Washington, within the jurisdiction of this court.

A similar offense is charged in count 11 in connection with a transaction between the defendant and Bertha M. Arnold of Olympia, Washington. That count charges that within the meaning of the law, the defendant wilfully employed such a scheme in the sale of common stock of the Peoples Gas & Oil Company to said Bertha M. Arnold of Olympia,

Washington, and as a part of such employment mailed a letter to her under date of July 16, 1936, and caused the same to be delivered by the United States mails at Olympia, Washington, within the jurisdiction of this court. This letter contains a solicitation to exchange the lease and development contract theretofore sold to her by the defendants, for stock of the Peoples Gas & Oil Company. Such solicitation constituted the sale of a security, within the meaning of the Securities Act of 1933.

It is for you, the Jury, to determine for your own satisfaction, beyond a reasonable doubt whether the defendant employed the scheme charged in the indictment in the sale of such securities by the use of the United States mails before you can convict him.

You should not find the defendant guilty unless you are convinced beyond a reasonable doubt that one or more of the false representations or promises charged in the indictment were a part of a scheme of his to defraud, even though you are convinced by the evidence beyond a reasonable doubt that in the furtherance of the scheme to defraud such defendant made false representations and promises not described in the indictment, but you may consider other false repre- [678] sentations and promises of defendant, if any have been shown, of a similar character in determining his intent in making any of those described in the indictment, which has been shown by evidence beyond a reasonable doubt.

The statute under which the thirteenth count of

this indictment is drawn in effect provides that if two or more persons conspire to commit an offense against the United States, and one of them does anything to effect the object of such conspiracy, all of such conspirators shall be punished.

The word "conspire" is defined substantially as follows: If two or more persons agree, acting upon a common purpose to commit a criminal act, they conspire.

The laws which it is alleged the defendant conspired with others to violate are the use of the mails to defraud and the use of any artifice or scheme to defraud in the sale of any securities by the use of the mails.

A conspiracy such as is alleged in count 13 of the indictment herein is not an omnibus under which the prosecution can prove anything and everything. The charge or accusation is limited by the terms of the indictment. The indictment charges but one plan or one scheme and one conspiracy, and no defendant can be convicted thereunder unless it can be shown beyond a reasonable doubt that he consciously became a member of such a conspiracy or a party to that scheme, and that the scheme was fraudulent. Further, the scope of the conspiracy or scheme must be gathered from the testimony, and not from the averments of the indictment. The latter may limit the scope of the evidence, but it can not extend it. In order to establish the crime charged in count 13, conspiracy, it is necessary: first, that the agreement to commit the particular offense against the [679] United States as alleged

in the indictment be established; and, second, to prove, further, that one or more of the parties engaging in the conspiracy has committed some act to effect the object thereof. Conspiracy being established, if you so find, then proof of the doing of one overt act charged is sufficient to warrant a verdict of guilty.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an expressed or formal agreement for the unlawful venture or scheme, or that they should directly by words or in writing state between themselves or otherwise what the unlawful plan or scheme is to be or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient that two or more persons in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common unlawful design. In other words, when an unlawful end is sought to be effected and two or more persons actuated by a common purpose of accomplishing that end work together in any way in furtherance of the unlawful scheme, each of said persons becomes a member of the conspiracy.

The success or failure of the conspiracy is immaterial. But before the defendant can be found guilty of the charge, it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and the defendant was an active party thereto.

In order to warrant you finding a verdict of guilty against the defendant on count 13, it is neces-

sary that you be satisfied beyond a reasonable doubt that the conspiracy as charged in the indictment was entered into between the defendant and at least one other person to violate the law of the United States in the manner described in the indictment. And it is further necessary that, in addition to the [680] showing of the unlawful conspiracy or agreement, the Government prove to your satisfaction beyond a reasonable doubt that at least one or more of overt acts described in the indictment was done by one or more of the conspirators, or at their direction or with their aid.

Under the charge made, the conspiracy constitutes the offense, and it must be made to appear from the evidence beyond a reasonable doubt before the defendant can be convicted, that he was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time an act was committed, if the evidence shows there was such. The mere fact that the defendant named may have engaged in the performance of any of the acts charged in the indictment as overt acts would not authorize a conviction by reason of that fact alone. But it is necessary to show that such defendant was a party to the conspiracy and unlawful agreement before the guilt of the offense charged is made out.

Each party to the conspiracy must be actuated by an intent to promote a common design. If persons pursue, by their acts, an unlawful object, one performing one act and another performing another act, all with a view to the attainment of the object

that they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect the object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and a purpose to further the common design; and if a person, understanding the unlawful character of the transaction, encourages, advises or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. Joint participation and joint assent in the conspiracy may be found like any other fact, as an inference from the facts proved.

[681]

By the provisions of the statute under which the first ten counts of the indictment in this case are drawn, it is made an offense for any person after having devised any scheme or artifice for obtaining money or property by means of false or fraudulent pretenses, representations or promises for the purpose of executing such scheme or artifice, or attempting to do so, to place or cause to be placed any letter postcard, package, writing, circular, pamphlet or advertisement addressed to any person residing within or without the United States, in any post office or station thereof or street or other letter box, etc. The offense consists of two essential elements. I might state to the jury I am not reading every detail of this statute because I have heretofore given it to you in an earlier instruction.

The offense contains two essential elements. First, there shall be devised a scheme or an artifice for the purpose of obtaining money or property by means

of false pretenses; and, second, that for the purpose of executing such scheme or attempting to do so, there shall be placed a letter, postcard, writing or circular in any post office or mail box of the United States to be sent or delivered by the Post Office establishment. Both of these elements must be established beyond a reasonable doubt before a conviction is authorized.

It is not essential to the making out of the charge that the scheme or artifice should have been successfully carried out, nor is it a defense for a defendant so charged to show that persons with whom he dealt and intended to deal received some return for an investment of their money, or that they would have received some return from said investment. It is essential only that it be shown that the scheme be formed with a fraudulent intent. [682]

It is necessary that the Government prove that the scheme or artifice employed by the defendant was of the kind charged in the indictment. It is not necessary, however, that it be proved that the scheme and artifice included the making of all of the alleged false pretenses, representations and promises; but it is sufficient if any one of them be proved to have been made and that the same were designed and would be reasonably effective in deceiving and defrauding persons with whom the defendant proposed to and did deal.

Fraud alone, as operated against the public, is not punishable under the Federal law. It is only when the mails are used in some way in connection with such fraud that it becomes punishable. Congress

has declared that the mails must not be used in any wise to further fraud or deception for the purpose of obtaining from others their money or property.

After a scheme to defraud or for obtaining money or property on false representations and promises has once been established, each letter mailed in furtherance thereof becomes an offense; and an indictment could charge as many counts as there were letters mailed for such purpose.

Any false, deceptive or deluding pretense put forth through the mails to obtain other people's money is an offense under this law. A false representation when it is coupled with a fraudulent intent constitutes fraud within the meaning of the law.

If you find from the evidence beyond a reasonable doubt that there was a scheme to defraud, and the mails were used by the defendant for the purpose of executing such scheme, then it is immaterial whether you do or do not believe that the persons who parted with their money were or were not gullible: or whether they should or should not have parted with their money under such circumstances. [683]

I instruct you that you are not permitted to draw any inference unfavorable to the defendant from the mere fact that he engaged in a speculative business, or from the fact that the venture did not prove successful.

Widely divergent geological opinions have been submitted to you in regard to the possibilities of discovering oil or gas in the Frenchman Hills. The question whether there is oil or gas in Frenchman

Hills, however, is not the question which you are called upon to determine.

In this case the defendant is not accused of making a mistake, but is accused of fraud; and the question is whether he had reasonable cause to believe and did believe, in good faith, that there was a prospect of discovering oil or gas in Frenchman Hills. If so, then he was not guilty of any fraud in so representing the matter to prospective investors.

The letters or documents mailed need not be effective to carry out the scheme. They need not be, of themselves, calculated to do so. They need not be criminal or objectionable, need not disclose a fraudulent purpose or need not show on their face that it was in furtherance of the scheme, **nor is it necessary** that any one should have parted with his money by reason of any communication through the United States mails, from the defendant. But the letters or documents must have some relation to and be a step in the attempted execution of the scheme, and they must be mailed with an attempt to aid in its execution.

Fraud and fraudulent intent are never presumed, but must be shown beyond a reasonable doubt by the evidence. Whether an alleged fraudulent intent upon the defendant's part existed is a question of fact for the determination of the jury, from the evidence. [684]

Before you can lawfully return a verdict of guilty upon any one of the counts 1 to 10 inclusive of the indictment, it is necessary that you be convinced from the evidence beyond a reasonable doubt

that this defendant used or caused to be used the Post Office establishment of the United States in the manner alleged in the count being considered.

The law, insofar as it applies to the first ten counts of the indictment herein, uses the language: "Used or caused to be used the Post Office establishment of the United States" and insofar as it applies to counts 11 and 12, which have heretofore been referred to as a violation of the Securities Act, it uses the language: "For any person in the sale of any securities by the use of the mails, directly or indirectly." In explanation of the foregoing you are instructed that it is not necessary to warrant a verdict of guilty upon any of the first twelve counts that the defendant be shown by his own hand to have placed in the Post Office the mail matter therein described. The one who placed it in the Post Office may have been entirely innocent. Therefore, in determining whether the defendant in this case caused the mails of the United States to be used directly or indirectly, you will take into account whether the evidence has shown such defendant had to do in connection with carrying into execution the alleged scheme to defraud.

In determining whether the defendant made use of the United States mail in connection with the charge contained in the indictment herein, you have a right to give weight to the presumption that every man is presumed to intend the natural and probable consequences of his voluntary act. This presumption is not a conclusive presumption. It can be rebutted.

If you do not find from the evidence beyond a reasonable doubt that the defendant, in association with one or more of the other named defendants in the indictment, devised the [685] scheme or artifice to defraud, described therein, that is that he might have made use of the United States mails, either directly or indirectly, or using or causing such mails to be used, would not constitute an offense, and you should acquit the defendant.

Before the defendant can be found guilty on any of the counts of the indictment, it is incumbent upon the Government to prove by evidence beyond a reasonable doubt that he was a party to the alleged scheme or artifice to defraud, and as set forth in the indictment; and if he were not such party, then his relationship in connection with the use of the United States mails, either directly or indirectly, would not constitute a crime.

As you have been heretofore instructed, a conspiracy is a combination between two or more persons to do a criminal or an unlawful act, or a lawful act by a criminal or unlawful means. From this definition of "conspiracy" it follows, of course, there can be no conspiracy where one individual acts for himself alone. A mere mental process can not justify a conviction of conspiracy. A common design is of the essence of the charge. A person, therefore, in order to become a party to a conspiracy, must combine with some one else to effect the object of the conspiracy by the means agreed upon.

As to count 13 of the indictment, you will be called upon to consider as to the defendant, among other

things the following question: Was there a conspiracy as charged in the indictment for the objects, or any of them, therein alleged? Second, if there was such a conspiracy, was the defendant a party to it? Third, Did the defendant after the formation of the conspiracy, if such was formed, or another conspirator, commit the overt acts, or any one of them, as alleged in the indictment? If the evidence satisfies you [686] beyond a reasonable doubt of the existence of said conspiracy and of said overt acts, or any of them, were committed by the defendant or another conspirator, as alleged in the indictment, and that the defendant was a party to the conspiracy when said overt acts were committed, you will find him guilty as charged in the indictment. If, however, the evidence fails to satisfy you of the existence of said conspiracy or of the commission of any of the overt acts, as alleged in the indictment, or that the defendant was a party to such conspiracy when any of the overt acts were committed, then and in that event you would find him not guilty.

You are further instructed that the term "overt act" as used in these instructions is meant an act committed by any one or more of the conspirators, if the evidence shows there was in fact a conspiracy, which act was intended to and had a tendency to forward the purpose of the conspiracy. Such act may be an agreement between two or more of the conspirators, if the evidence shows there was a conspiracy, or it may be an act performed by any of the conspirators, and would have a tendency to forward the purpose of the conspiracy and the intent

of the conspirators, or it would have a tendency to accomplish the purpose of the conspiracy.

In the 13th count of the indictment, as heretofore stated, the charge is conspiracy. You are instructed that even if you should find from the evidence that each one of the alleged overt acts in fact existed, you can not find the defendant guilty of said alleged thirteenth count, unless you also in addition thereto find that there was a conspiracy to defraud consciously entered into, if such there was.

In the conspiracy count it is alleged that the defendants conspired at a number of places, but in the jurisdiction of this court. That is in the Southern Division of this District. It is also alleged they conspired at a number [687] of places outside the jurisdiction of this court, and a number of overt acts, that is acts which the defendants are accused of having done to effect the object of the conspiracy, were done within this Division of the District, while a number of overt acts were alleged to have been done outside this Division. A difference is to be noted regarding the jurisdiction of the court of which you, the Jury, are a part, in the mail fraud counts and in the conspiracy count.

Inasfar as the mail fraud counts are concerned, unless the act which the defendant is accused of having done or caused to be done was an act done within this Division, the Court has no jurisdiction, and you have no authority to return a verdict of guilty. If there was no conspiracy by the defendant as alleged within this Division and no act to effect the object of the conspiracy done within this Divis-

ion, likewise you can not find the defendant guilty on count 13.

If either of the defendants conspired as alleged within this Division, or having so conspired without the Division, did one of the alleged overt acts within this Division, then he would be guilty of the charge contained in count 13.

The indictment alleges that the defendants from March 27, 1934 to on or about October 22, 1937 conspired to commit the within-described offenses, that is a continuing conspiracy is alleged. It is not necessary to the defendant's guilt that he be one of the original conspirators. That is, he need not have been one of the first to conspire as alleged, but it is necessary to guilt that he be shown by evidence beyond a reasonable doubt to have been one of the conspirators during the continuance of the conspiracy, and that after he became such conspirator one or more of the overt acts alleged were done.

You are further instructed that other acts of [688] similar character are not to be considered by you for the purpose of determining whether or not the defendant committed any of the acts charged in the indictment; but if you find that the defendant did commit any of the acts set out in the indictment you may consider similar acts consisting of other letters mailed to other persons who are not named in the indictment for the sole purpose of determining the intent on the part of the defendant in mailing or causing to be mailed the letters set out in the indictment.

You may find from the evidence that certain others charged in the indictment herein were more active than others in the transactions in question. In this connection you are instructed that it is the law that not only is a person who directly commits an act made an offense by the laws of the United States a principal offender, but also any person who aids, abets, counsels, commands, induces or procures the commission of such act is likewise a principal. Therefore, if you find from the evidence beyond a reasonable doubt that the defendant, H. Harry Meyers, knowingly and intentionally did the things alleged in the indictment or persuaded, aided, advised or encouraged others to do them, then he would be guilty. While mere knowledge that others are violating the law does not make one a principal in the commission of such offense, even though having such knowledge he does nothing to defeat the criminal purpose of those engaged in the commission of a crime, yet where men have agreed, acting upon a common purpose, to commit a crime, during the continuance of such agreement they make one another agents to act in furtherance of the agreement.

You are instructed that on the question whether a conspiracy existed as charged, you are not to consider statements made or acts done by any defendant in furtherance of the alleged conspiracy in the absence of other defendants named [689] in the indictment, except against the individual making the statements or doing the acts.

Unless you are convinced by the evidence beyond a reasonable doubt that the defendant so making

such statement or doing such act was authorized by another or other of the defendants to make such statements or do such acts in furtherance of the conspiracy, and in such case you will consider such evidence only against the defendant actually making the statement or doing the act, and such other defendant who, as you shall be convinced by the evidence beyond a reasonable doubt authorized the making of such statements or doing such acts.

The good faith of the defendant is to be determined by his several acts and declarations, and they are to be construed and interpreted in the light of conditions as they appeared to the defendant to be at the time the statements and promises were made. The defendant is not on trial for errors of judgment. He is on trial for a criminal offense, an essential element of which is an evil or a criminal intent. This the Government must prove to your satisfaction beyond a reasonable doubt; and if the Government has failed to do so, then it is your duty to acquit the defendant.

The indictment in this case charges that the defendant wilfully and unlawfully did the acts and things alleged in the indictment. In this connection you are instructed that there is a very real and vital difference between simply doing an act and doing an act wilfully. In the first case no bad intent or purpose is involved. In the second case of wilfully doing the act, the elements of guilty knowledge and bad purpose are involved and they constitute the gist of the offense.

The use of the word "wilfully" in that connection in the indictment implies not merely voluntarily, but also an [690] evil intent and a bad purpose to do wrong. The intent of the defendant charged under the provisions of the law stated is a material element necessary to prove the offense; and in arriving at a decision upon that question all the facts and circumstances shown in the case as touching the conduct of the defendant should be considered.

If a man shall make to another a representation as to things which do not exist, and it appears that he had no reasonable ground to believe that the fact is as he states it, such statements and conduct are to be taken into consideration in determining whether an innocent statement was made in good faith, and whether the intent was that others were to be deceived, and that the first person should reap a benefit and the other suffer a loss.

Criminal intent may be implied from the acts and the conduct of the accused. His acts and his conduct as shown by the evidence, considered in relation to the charge made, may establish satisfactorily a criminal intent.

If the statements alleged to have been falsely and fraudulently made by the defendant were made in good faith, and the defendant believed at the time or had reason to believe them to be true, they would not be evidence of fraud and you should acquit the defendant.

You are instructed that fraud is never presumed. It is always a question of fact. It is therefore necessary for the prosecution in this case to prove

beyond a reasonable doubt that there actually was fraud.

As I have heretofore instructed you, criminal intent is a necessary element of the offense charged in the indictment. Therefore, the defendant can not be found guilty if you find merely that his plan or scheme was impractical and no more. The defendant is not on trial, as heretofore stated to you, for errors of judgment or negligence in his conduct. [691] The defendant's good or bad faith in these matters is to be determined by his several acts and declarations construed and interpreted by conditions as they existed at the time the acts were done and the declarations made and as they appeared to the defendant at that time and not as subsequently shown in fact to be.

The mere fact that a representation made by a defendant was untrue would not be sufficient to constitute fraud on his part. And unless at the time of making such statement such defendant knew it to be false or knew he had no reason to believe it to be true, an honest expression of opinion actually entertained or such an honest representation in regard to a matter of estimate or judgment where it proves to be erroneous, is not such a false or fraudulent representation as the defendant is charged with making in this case.

If one, after learning of the falsity of a representation continues to make it, he can not escape responsibility because he originally believed it to be true. No matter how unwarranted by the facts or extravagant a promise may be, if the party making

it honestly believes it will be carried out, there is no guilt. Mistake of judgment, folly, improvident lack of foresight or ability or being too optimistic are not enough to show a fraudulent intent or purpose. But if a person promises to do something that he does not intend to do, or represents that something will happen that he knows will not happen, or that he believes will not happen, it is a false promise. The extravagance of the promise and the intelligence, experience and knowledge of the person making it are things to be considered by the jury in determining whether such promises were made in the honest belief that they would be performed or come to pass, or made with the guilty intent that it would not be performed or the guilty knowledge that it would not come to pass. The representation may be so [692] obviously without foundation as to afford cogent evidence of the criminal intent of him who makes it. Nevertheless if it results from honest ignorance or delusion it does not make it a scheme to defraud. Statements or representations as to future or contingent events, or as to exceptions or probabilities, or what will be or is intended to be done in the future, or mere expressions of opinion about what will occur in the future, or as to results of what will be anticipated in the future from the present conditions, if made in good faith, do not constitute fraud, even though they turn out to be false.

You are therefore instructed that you must disregard all representations which contain matters of opinion or promises of future performance, unless

you find that such statements of opinion were made with a reckless disregard for the truth or with the actual knowledge of the falsity thereof, or that at the time said promises were made by the defendant they were not made in good faith, and the defendant at said time had no intention of fulfilling said promises. The intent to defraud in this case is a question of fact and not a question of law. As such question of fact, it must be found by you to be proved by the evidence in the case beyond a reasonable doubt before you are justified in finding a verdict of guilty against the defendant.

There are certain elements necessary, whether it be false representations or false promises that is being considered, the absence of any one of which results in there being in law no false representation, no false promise. First, one must state something to be true; second, the thing stated must in fact be false; third, at the time of stating it the defendant must know it to be false; fourth, the defendant must state it as true with an intent on his part that another should act to his prejudice, relying upon the truth of the [693] false statement.

In this particular case a necessary intent upon the part of the defendant must be shown by evidence beyond a reasonable doubt before guilt is made out, being the intent that the persons to whom the false representations or false promises were made should, relying upon their truth, part with their money or property in the belief or expectation that the property in which they were asked to invest,

its management, development and prospects were and would be as represented by the defendants.

You have been instructed that it is not an essential element of the offense alleged in the first ten counts of the indictment that the fraudulent scheme of which the defendant is accused be successfully accomplished. You have been elsewhere instructed as to the sale of the security being a necessary element of the offense charged in counts 11 and 12; but insofar as the first ten counts of the indictment are concerned, the question is not: What was accomplished by use of the United States mail? but: What was the purpose in the using of the mail? What were they attempting to do? If the purpose in so using the mail was to execute or attempt to execute a scheme to defraud which the defendants named in the indictment are accused of having devised, that is all that is essential to guilt in this particular, and the result of their efforts in such use of the mail is not material, unless the use of the mail without a purpose to execute and without an attempt to execute any such scheme, would not be punishable. This is true although the use made was one in some way related to the transaction with those named in the indictment, or those concerning whom testimony has been given. This purpose is one of the questions of fact in the case for your sole consideration and determination. [694]

The indictment alleges the scheme was to obtain money or property by false pretenses, representations and promises. A false representation relates to something past or existing at the time the repre-

sentation is made and then known to be false and then made with the intent and purpose to induce another to act to his prejudice in the belief that it is true.

A false promise differs from a false representation in that it relates to something promised to be done in the future. If such statements were entirely false and known by the defendant to be false and he well knew that he had no reason to believe them to be true, they would, within the meaning of this law, be false promises.

In considering the testimony it is for you as jurors to decide whether at least some of the representations and promises were adopted and used by the defendant in the case for the purpose of selling Frenchman Hill leases and collecting sums of money thereon; second, whether or not these representations, or some of the material representations, were false; third, if false, whether the defendant knew them to be false; and, fourth, whether the defendant, Meyers, had a material and responsible part in these activities.

It will be proper for you to ask yourselves whether statements were made by the defendants that their purpose in coming up here from the state of California was principally to develop the oil resources of this state; and, if so, whether that was true; whether their principal purpose was to sell lease units for their own benefit; whether statements were made by the defendants or condoned by them to the effect that the defendant Meyers was a very wealthy man, a multi-millionaire, a very

wealthy man, an international financier, builder of the Golden Gate bridge, and that he had satisfied himself by *him* own investigation that the chances of bringing [695] in an oil field in Frenchman Hills were so good that he was investing large sums of money of his own in the enterprise; and whether such statements were true or false; whether it was true or false that the leases were sold only or principally because the defendant Meyers needed and wanted by such means to build up a political organization in this state in order to have support in the fight he expected with the major oil companies if and when he should bring in an oil field and would have to develop a market for oil; whether it is true or false that he definitely promised the investors to finish the well being drilled and to make a thorough test of the Frenchman Hills field at his own expense; that he had plenty of money for that purpose, so that investors could be sure there would be no failure for lack of funds; and whether or not such representations and promises were made by and in behalf of the defendants for the purpose of obtaining money from investors; and whether or not they were made in good faith and with the full intent to perform them.

Many other questions arising from the charges in the indictment and the testimony relating to them must be fully considered by you, and in deciding on the basis of the testimony you have heard and the documentary evidence introduced during the trial.

As to testimony relating to representations regarding the defendant Meyers' relations with Jo-

seph B. Strauss, the Chief Engineer in the construction of the Golden Gate bridge, and the Strauss Engineering Company, you are instructed in determining whether such representations were made, and whether they were true or false, the meaning of the term "principal" and "associate" may be considered.

Webster defines the principal in an organization as "one highest in authority, character or importance or degree"; [696] and "associate" he defines as "one having an interest in common with another, as a partner, a confederate, a colleague in office".

It is for you as jurors to decide whether the defendant represented himself or was represented, with knowledge and consent, as to the position of either principal or associate with Mr. Strauss and the Strauss organization, and what was the purpose and effect of such representations in connection with the lease-selling enterprise.

The Jury are instructed that the outstanding issue upon which you must pass in this case is as to the character of the plan that was put into effect for the purpose of the lease-selling campaign, which has been described in detail to you by various witnesses in this case. If the plan was not a dishonest arrangement and intended to be made effective by deceiving, misleading and false representations, pretenses and promises in connection with the sale of leases, then your verdict in this case should be "not guilty."

On the other hand, if the Government has established to your satisfaction beyond a reasonable doubt

that the selling campaign for the sale of leases was based upon false, deceptive and misleading representations, pretenses and promises, and was intended to be such for the purpose of obtaining money and property from investors; and you further find that the defendant was a party to such a design and plan, then you would find him guilty on so many of the first twelve counts of the indictment in which you find was made use of the United States mail.

In this connection I instruct you if the original intent of the plan was one to deceive and defraud the public and obtain from them money and property through means of false and misleading representations, pretenses and promises, [697] it would not be necessary that you further find a part of such original intent was to use the mails at all. But the defendant can not be found guilty on any of the first twelve counts in the indictment unless the Government's evidence has established beyond a reasonable doubt that use was made of the United States mails.

In other words, while it is absolutely essential that there be an intent to defraud, it is not necessary that there be an intent to use the mails in carrying out such scheme, but it is absolutely necessary and essential that the Government's evidence establish beyond a reasonable doubt that the mail was used in connection with carrying out such scheme.

The thirteenth count in the indictment is designated as the conspiracy count: "The defendant,

together with others named in the indictment is charged with a conspiracy to violate both the laws that are referred to in the first twelve counts. In the thirteenth count, before the defendant can be found guilty, you must not only find from the evidence beyond a reasonable doubt that he was a party to the conspiracy embracing one or more of the material features of the false and fraudulent scheme, but also as the time such scheme was devised and put in motion it was intended that use should be made of the United States mails to further it and carry it into effect.

As I have already indicated to you, the serious question for you as jurors to decide on all counts in the indictment herein is whether the evidence establishes the guilt of the defendant in regard to his intent to mislead and deceive investors who purchased leases in the Frenchman Hills district, which leases they would not have purchased if they had not relied upon such false and fraudulent representations, pretenses and promises. [698]

In this connection you are further instructed that if the Government has not proven beyond a reasonable doubt that the defendant was a party to making such false representations, pretenses or promises, then he would not be guilty of any of the charges contained in the indictment, and your verdict should be a verdict of "not guilty" as to all counts.

There are two kinds of evidence by which the Government may sustain charges in an indictment, and one is direct and positive. The other is indirect or circumstantial. Evidence is said to be direct

and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the case. Evidence is said to be indirect or circumstantial, on the other hand, when the witnesses testify to matters having only an indirect or circumstantial relationship to the issues in the case.

The prosecution depends in this case for conviction in large part on circumstantial evidence. While you may show what a man does by direct evidence of eye witnesses, the only way that you can show what he intends or believes or what his plans are, or what he has devised, or what his purpose is or was, is by circumstantial evidence.

The indictment charges that the defendants had devised a described scheme for obtaining money and property by means of false and fraudulent representations and promises. Such a fraudulent purpose can only be shown by circumstantial evidence.

A verdict of guilty upon circumstantial evidence is not only warranted, but it is the duty of the jury upon such evidence to return a verdict of guilty when it measures up to the requirements of the law. The law requires that all of the circumstances necessary to show guilt must themselves be shown by evidence beyond a reasonable doubt; and these circumstances must all be consistent with one another, that they [699] must all be consistent with the defendant's guilt, and they must all be inconsistent with every reasonable theory of his innocence, and inconsistent with every reasonable hypothesis except that of guilt. If the circumstantial evidence

measures up to all of the foregoing requirements, it is the duty of the Jury to return a verdict of guilty. If it fails to do so in any one of such particulars, your verdict would be not guilty.

If the evidence supports two theories, both reasonable, one consistent with the guilt of the accused, the other consistent with his innocence, it is the duty of the Jury to acquit him.

You are the sole and exclusive judges of all the facts in the case, the weight of the evidence and the credibility of the witnesses. In weighing the evidence and in measuring the credibility of the witnesses who have appeared before you and have testified, you should take into account their appearance, conduct and demeanor upon the witness stand. You will consider whether a witness had testified with an appearance of candor or whether his testimony has been exact, positive and direct, creating in your mind the belief that he was trying his best to tell you the truth as he understood it, or whether by hesitation, equivocation or other conduct he has led you to believe that he was trying not to tell you all that he knew or distort from the exact truth that which he did tell you. On the other hand, you will take into account whether a witness appearing appears too willing to give his testimony, whether he repeatedly injected into his testimony statements that were not fairly responsive to the questions put to him. You will also take into account the experience of the witness and the situation in which he was with regard to the things about which he undertakes to testify, as one witness by reason of

his experience or by reason of his [700] relation to the situation and the particular transaction might be better able to see, know and understand exactly what took place on a given occasion than another witness equally honest, not having the same advantage in the foregoing particulars.

You will also take into account the reasonableness of the testimony, considering whether his testimony appears probable, whether it appears unlikely, in view of all the circumstances.

You will also take into account whether the testimony of a witness has been corroborated where you would expect it to be corroborated, if true.

You will also take into account whether the conduct of a witness has been at all times consistent with the testimony which he gives.

If you find that any witness has wilfully testified falsely concerning any material matter, you have a right to disregard the testimony of such witness entirely, except insofar as it is corroborated by other credible testimony.

“Wilfully” as used in this instruction means “knowingly false, with an intent of deceiving and misleading the Jury.”

In measuring the credit of a witness, you will also take into account what, if any interest on the part of the witness has been shown in the case; whether it has been shown in the manner in which the witness gives his or her testimony, or whether it has been shown by the relation of the witness to the case and those connected with the case.

The defendant, having taken the stand and testified in his own behalf, you will apply to his testimony the same rules and tests as you do to the testimony of any other witness, including his natural interest in the result of the case.

You are further instructed that as to any evidence admitted showing prior conviction of any witness who has testified in this case, you will consider such evidence only insofar [701] as it effects the credibility of such witness, and for no other purpose. It is for you to say, in the light of such conviction, as to the weight and credibility you determine should be given the testimony of such witness. A prior conviction of a criminal offense does not of itself destroy the credibility of such witness, but it is a fact to be given consideration in weighing the evidence, where it is uncorroborated by other testimony.

The jury are instructed that evidence for the purpose of establishing the general reputation of the accused for honesty, truth, fair dealing and being a law-abiding citizen is always admissible in this class of cases and the Jury should consider such evidence, together with all of the other facts and circumstances shown in evidence in the case, for the purpose of determining the guilt or innocence of the defendant.

Where a defendant is accused of a crime involving a dishonest scheme, a scheme to defraud, as in this case, if the evidence shows that his general reputation in the community where he resided for honesty and integrity was good prior to the alleged commis-

sion of such an offense, that also is a circumstance that you should take into account in determining whether under all the evidence you are convinced of his guilt beyond a reasonable doubt. But the Court instructs you that if after a consideration of all of the evidence in this case, including that concerning the reputation of the defendant, the Jury is satisfied beyond a reasonable doubt of the guilt of the accused, then it is your duty to find him guilty, notwithstanding the fact that heretofore the accused has borne a good reputation for honesty, truth and fair dealing and as a law-abiding citizen.

From time to time during this trial counsel for the defendant have interposed objections to evidence, some of [702] which the Court has sustained and some overruled. With reference to this I instruct you that it is not merely the privilege, but it is the duty of an attorney to make such objections whenever he believes they are well founded in law. This occurs in the trial of every lawsuit. You are not permitted to draw any inference unfavorable to the defendant from either the fact that the objections were made, or from the rulings of the Court.

Before a verdict can be accepted, your entire number must approve of it. It is not only your duty in this trial to have listened to and weighed the evidence of all the witnesses who have testified and to follow the instructions of the Court upon the law, but it is also your duty to keep open as best you can your minds for a consideration of what may be said by your fellow jurors when you go into your jury room. This includes their recollection

of what the testimony has been, and their arguments concerning what such testimony establishes.

You will not by lot determine what your verdict shall be, nor will you compromise or trade in reaching a verdict, nor submit to a verdict merely to end the case, or to be with the majority; but the mere fact,—but the fact that a majority of the Jury may be opposed to you should be carefully considered by you in determining whether or not the position taken by you may not, after all, be wrong. If you are convinced, after having once announced your stand or conclusion upon a matter in question, that you have been mistaken, do not, then, from mere pride in making good your opinion that you before expressed, persist in your error. If, however, if after giving full, careful and patient consideration to all that has been shown by the evidence, after hearing the arguments of the attorneys and instructions of the Court, the recollection and reasoning of your fellow [703] jurors, you are still unable to agree with them, under your oath, you should not submit merely to be with the majority.

When you retire to your jury room to deliberate upon your verdict in this case it will become your duty, first to select one of your number as foreman who will speak for the jury when called upon by the Court to do so, and who will sign your verdict when it has been agreed to.

No verdict can be returned in this case except by the unanimous finding of all twelve of you.

The Court has prepared a *form* of verdict. This form of verdict lists the counts of the indictment

and the name of the defendant, and it reads: "We the Jury empaneled in the above-entitled cause find the defendant, H. H. Meyers",—and then there is a blank and the words—"guilty, as charged in count 1 of the indictment", and then it says "..... guilty as charged in count 2" and so on down to the thirteenth count. If you find the defendant guilty on any of the particular counts it is unnecessary to insert any word in the blank space. If you find him not guilty upon any count, you will put in the word "not" before the word "guilty". If you find the defendant guilty on some counts and not guilty on others, you will make the proper entry.

There have been a large number of exhibits admitted in this case. You will be permitted to take them with you to your jury room.

That concludes the instructions.

I think I will permit counsel now, without sending the Jury out, to make known any objections. And the jurors will, theoretically, not listen to what is taking place. You may just be at ease.

Mr. Simon: May it please the Court, the Jury not yet having retired, I desire to call the Court's attention to certain matters connected with these instructions. [704]

In the first place, we desire to except to the instruction on what constitutes a false representation, as given by the Court, wherein your Honor set forth the four requirements, for the reason and upon the ground that there was not included in those elements the requirement that the representation must be as to a material matter. By that "material matter"

we mean as to a matter which would be reasonably calculated to influence the action of the average reasonable person.

The Court: The exception will be noted and allowed. The Court takes the position that is covered in another instruction.

Mr. Simon: If the Court please, we desire, likewise, to except to the instruction given with reference to the credit of a witness, which has to do with corroboration. We feel that one of the elements which your Honor pointed out as to whether or not the testimony of a witness was corroborated where you expect to have it corroborated as given by the Court, ought to have eliminated or made an exception of the testimony of the defendant for the reason and upon the ground that as otherwise constituted it would place upon the defendant the burden of producing evidence other than his own, which we do not believe to be a correct statement of the law.

The court: I am frank to state to you, Mr. Simon, that I don't feel that the instruction is one of such vital importance that it would be fatal, but I rather incline to withdraw that from them, and I am willing to do that as soon as I find it in here.

Mr. Hile: That is the instruction on the credibility of the witnesses, your Honor.

The Court: Just one paragraph on corroboration. [705]

Mr. Simon: Yes, your Honor.

The Court: I know the substance of it, so I shall offhand instruct the jury. In instructing you on

credibility of witnesses, among other things, I said that where the testimony of a witness upon a material matter could have been corroborated and was not you had a right to expect corroboration and to question such testimony. That instruction is withdrawn from your consideration entirely, and you will give no regard or consideration to it,—just that part concerning corroboration.

Mr. Simon: Your Honor, may I say you have now gone further than we request. We believe the instruction is correct as to witnesses other than the defendant. We merely asked, your Honor, that the instruction except the defendant from its operation.

The Court: I couldn't give that. I have withdrawn the corroboration feature on both sides.

Mr. Simon: Your Honor will allow us an exception to the complete withdrawal?

The Court: Yes.

Mr. Simon: The other exception that we have, your Honor, is a combined exception to the instruction as given by the Court and to the failure of the Court to instruct in accordance with our written requested instruction on the nature and the function of character evidence.

So far as it goes, we have no objection to the instruction on character evidence which your Honor gave, but it is our position that it ought to be amplified and go further, in accordance with the last paragraph of the last sentence of requested instruction No. 25.

The Court: I think the instruction given is the law and I will allow an exception. [706]

Mr. Simon: That, your Honor, is all. Thank you.

The Court: You may swear the bailiffs. [707]

The Motion for a new trial having been argued at length by the respective counsel, the Court rendered his decision as follows:

The Court: It is after twelve o'clock now, but I think I am prepared to make a disposition of this matter. The motion for a new trial has got to be overruled. It is quite evidence that errors that this Court made, whatever they were, if there were any, if they were vital, they will be subject to correction in the Appellate Court, unless a new trial were granted, and a new trial should not be granted in a case of this type, character and magnitude, except it be very clear to the trial court that he has committed error of a type and character as to have resulted in an unjust verdict, and one that would not have been returned but for the commission of such error.

Now, I am not convinced of that fact. This case on the previous trial took something over six months to try, and a hundred or so witnesses were called and three or four hundred exhibits were offered in evidence. It resulted in a mistrial as to this defendant only. And in case a new trial such as there was before this Court and we have now under consideration, of necessity the rules of what was competent to be admitted and what was not—the same rules should apply that applied in the pre-

vious trial, generally speaking, the rules as to admissions against interest and the damaging statements made by co-defendants, with the proper instructions warning the Jury, as was given in that trial and given at this trial, would still prevail in this case. The Court, however, restricted the Government in its proof here as to such defendants as had been acquitted on [708] the previous trial. I am inclined to believe that perhaps I was in error as against the Government because, as I said, after all we had to try this case as to this defendant as though it were a trial with all the others joined with him.

Now, the situation that was materially different in this case from that that prevailed in the previous trial was that immediately following the Government's opening statement counsel for the defendant made an opening statement that went into great detail and advised the Jury as to the nature of the proof that would be submitted. On the strength of that opening statement,—and I want to say for counsel for the defense that an effort was made to support the various assertions that were detailed to the Jury,—when they came to making proof in the defense; but by reason of that statement the Court became unusually liberal in the scope permitted on cross examination, feeling and believing that a great deal of time might be saved. Consequently numerous documents were admitted in evidence then while Government witnesses were on the stand that would not have been within the narrow limits of ordinary cross examination.

In the course of such liberal cross examination the defendant was permitted to introduce a large number of exhibits. I would not attempt to depreciate that; I could not if I would. They were all more or less documents that would fall within the narrow limits of the hearsay rule, for the purpose of sustaining the position that he later took as a witness, and for the purpose of sustaining the announcement made by the counsel in his opening statement, that he would show an intimate and close relationship with the deceased Strauss. And the matter of that relationship and the belief that the public all placed in it and relied upon the representation in that regard, was a major,— [709] in this Court's opinion, was a major factor in inducing the public to buy these leases that involved almost two million dollars.

Now, when the defense offered these various documents in evidence some of them were of an extremely intimate character. One, I recall, and I can not give the number of it, was written in long-hand by Strauss and he asked that it be destroyed. And the defendant produced it and offered it here in evidence. They had some secret code between them. Strauss being deceased, of course could not be called to refute the contents and effect of these letters; and to have allowed the record to stand in that position with the defendant having made it, would have created a situation, as far as the triers of the facts were concerned, that would have compelled them to resolve the allegation in the indictment that there was an intimate and close relation-

ship between Strauss and the defendant, and that the defendant was one of the major characters in the construction of the Golden Gate bridge.

Now, the letter written by Mr. Strauss subsequent to that letter which the defense put in, while it evidences considerable animosity, indicates, likewise, that he felt that he had been over-reached and that facts had been presented to him as to the importance and significance of this defendant in the construction of the Golden Gate bridge that he later ascertained were untrue. And, for that reason, I feel that the Court not only acted within its discretion,—and there must of necessity in a case of that nature be a wide discretion with the trial court in the introduction of evidence,—but that it would have been inconsistent in the administration of justice, to deny the admission of the particular document in question, because otherwise you had the record presenting only one side and not giving the whole story.

And, after all, while I am comparatively new in judicial work in the Federal procedure, I have tried many criminal cases over a period of ten years of service on the Superior Court bench of this state. And, after all, the endeavor of the Court, both trial and appellate, is to so control the introduction of evidence, where the case is a jury trial, as to make it possible to ascertain what the truth is and what the facts are; and every rule of evidence that we have was adopted and followed for that purpose.

While Courts have no right to do violence, wantonly, to the rules of evidence, neither are they supposed to give so narrow a construction to the rules of evidence that it will result in a miscarriage of justice.

I readily state that the letter from Strauss to Swenson, Government's exhibit 98, would not in the first place have been admitted, had it not been for the broad ground taken by the defendant in announcing the nature of proof that they were going to offer, and the liberal rule adopted by the Court, in admitting on cross examination of the Government's witnesses various documents that could only be answered by Government's Exhibit 98.

Now, about the Horowitz matter. I am only going to discuss this briefly. It became competent and proper—that is Government's Exhibit 23,—when all the evidence in this case was taken into consideration, particularly those papers or receipts,—I have forgotten what they here labeled them—

[711]

Mr. Hile: Broadsides.

The Court: The broadsides and the material in the salesmen's kits, and particularly I might state that the Court rather narrowed the testimony of innocent salesmen in carrying forward this program. Many cases that I have examines permit a much wider latitude even though they were innocent. And to offset that it was quite proper that Government's Exhibit 23 be admitted.

Now the letter, Defendant's Exhibit 110, that was not admitted, that is the letter from Mr. Coles to

Mr. Swenson. Mr. Coles was here, called as a witness by the Government and certain testimony the Government sought to offer about it was damaging testimony. They could only offer it through Mr. Coles; and as a former attorney for the defendant, upon objection, the admission was denied because the attorney claimed privilege, and he had a right to do so.

Then it attempted to introduce a letter by the attorney of the defendant at the time it was written, filled with self-serving declarations and assertions, and it would have been, had he attempted to testify to such facts, the Court would have been compelled to sustain objections because of the relationship that then existed between him and the defendant. And the rule that protected him in the matter of being forced to divulge certain facts should be given application, as well as the rule of self-serving declarations.

The Troeger matter, frankly I was much concerned as the record in this case will show, over the testimony, and had even prepared a formal instruction that would have limited that evidence. But upon the defendant taking the stand and basing his defense largely upon his life history and the various enterprises in which he had engaged and the money he had made out of them and the successes that had [712] resulted from his efforts, and the details of this Translux matter, and his interest in connection therewith, why it seems to me that it would be out of place to attempt to limit or exclude the testimony of Mr. Troeger.

Now, as to the limitations of cross examination of the witness Swenson, there was no such limitation placed upon that cross examination as indicated by counsel in the cited case as to where he lived or what he did. But when it is sought to try postal inspectors by showing that his official acts were acts motivated by animosity and bias and prejudice, and sought to establish such a fact by cross examination of the witness himself, who could be asked leading and suggestive questions and could only answer "yes" or "no," and the Government would be in no position to really refute inferences that might be drawn from them, I feel the Court was perfectly right and would have been in error to have done otherwise. If any independent evidence was available to establish the bad faith on the part of Mr. Swenson in his investigation of this case, and the part he played throughout the prosecution, if that would have been offered, there would have been a different situation presented.

Now, some mention was made of the fact that the Jury, by their verdict, found the defendant not guilty of conspiracy and therefore evidence that had been admitted of representations made by the co-defendants of conversations had, even with the instructions the Court gave in that regard, but that there was error committed is not my view of that situation; and I am perfectly willing to stand on it. When the Jury found the defendant guilty on the first ten counts of the information, they found him guilty of conspiracy. They couldn't have done otherwise, because the basis of conspiracy [713]

count thirteen is the scheme devised and announced in the first ten counts. Consequently, all evidence that would have been competent, had there been but one count and that a conspiracy count, would likewise have been competent in establishing guilt on the first ten counts, because there could be a scheme to defraud and carried forward by a single individual. But here it was carried forward by six other named defendants or seven other named defendants, and numerous others.

Then I will pass the income tax return because I am confident that immunity disclosure on income tax returns is not upon so narrow a ground it can not be used in court when the information contained in it becomes material.

The instruction as to false representations, and the error claimed that it did not use the term "material allegations", I think an examination of the fifty-four pages of instructions, much more extended than I would have given had I been trying the case initially, because they are loaded with a superabundance of precaution,—an examination will show in numerous places, when the instructions are considered as a whole, references made to the fact that the representations must have been material and must have been relied upon.

And the other instruction on reputation, that instruction is one that has been given in almost identical form by the courts of this state since the beginning of statehood, and it does warn the Jury,—not in the same language, probably, as the defendant's instructions,—that they must give con-

sideration and weight to the good reputation that this defendant bore before the time he was indicted for this offense; but if that fact, taken into consideration with all other facts given in evidence in the case still leaves the [714] Jury convinced of his guilt, they shall find him guilty; and if not, they should find him not guilty.

I think I have generally touched upon such matters as I feel counsel have argued as being major. There are some others here, but I think they take them more or less as minor.

I have taken this time to thus informally give my reasons so that they might be helpful to counsel when this case is appealed, as I assume it will be, and that it will likewise possibly throw a little light on the trial court's position in the matter that will be helpful to the appellate court in passing upon the case.

The motion for a new trial is therefore overruled and exception allowed to the defendant. [715]

[Title of District Court and Cause.]

CERTIFICATE.

I, Charles H. Leavy, United States District Judge, sitting as a Judge of the United States District Court for the Western District of Washington, Southern Division, and the Judge before whom the trial of the above entitled case was conducted, do hereby certify:

That the foregoing Bill of Exceptions, consisting of 3 volumes, contains all of the proceedings had, all the evidence offered, admitted or adduced at the trial of said cause, together with all exceptions taken which are applicable to the question raised upon this appeal, and said Bill of Exceptions is hereby settled, allowed, certified and filed as a true and correct Bill of Exceptions in said cause and is hereby made a part of the record in said cause.

Done in open court, at Tacoma, Washington, this 4th day of October, 1943.

CHARLES H. LEAVY,
United States District Judge.

Approved

G. D. HILE
Asst. U. S. Atty.

Approved

BERNE E. JOHNSON
Atty. for Defendant

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Southern Division, Sept. 15, 1943. Judson W. Shorett, Clerk, by Edgar Schofield, Deputy. [716]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Oct. 4, 1943. Judson W. Shorett, Clerk. By E. Redmayne, Deputy.

[Endorsed]: No. 10325. United States Circuit Court of Appeals for the Ninth Circuit. H. Harry Meyers, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed October 25, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10325

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S DESIGNATION OF
ADDITIONAL RECORD ON APPEAL

Comes now the appellee, the United States of America, and designates the following plaintiff's and defendant's exhibits, admitted in evidence on the trial of the above cause, and requests that they be included in and set forth in full, at the various

points designated, in the printed transcript of the record on appeal; said exhibits having heretofore been forwarded to and filed with the Clerk of this Court, pursuant to an order of the trial court and being numbered as follows:

Plaintiff's exhibits 122, 123 and the first two checks in 124, to be inserted at the end of page 367 of the Bill of Exceptions as forwarded by the Clerk of the trial Court.

The third check in plaintiff's exhibit 153, Nos. 157 and 158, the third check in number 162, the second check in number 163, the fourth check in number 164, the fourth and fifth checks in number 165, and number 168, all after line 11, page 368 of the said Bill of Exceptions.

Plaintiff's No. 181 after line 14, page 379 of the said Bill of Exceptions.

Plaintiff's Nos. 183 and 184, after line 17, page 381, of said Bill of Exceptions.

Plaintiff's Nos. 185, 186, after line 15, page 382 of said Bill of Exceptions.

Plaintiff's No. 187, after line 14, page 384 of said Bill of Exceptions.

Plaintiff's Nos. 189, 190, 191, after line 11, page 386 of said Bill of Exceptions.

Plaintiff's Nos. 192, 193, 194, 195, 197, 202, 205, 207, 208—all after line 30, page 387 of said Bill of Exceptions.

Plaintiff's No. 218, after line 7, page 389, of said Bill of Exceptions.

Plaintiff's No. 221, after line 22, page 389 of said Bill of Exceptions.

Plaintiff's Nos. 223, 224, after line 13, page 391 of said Bill of Exceptions.

Plaintiff's No. 225, after line 25, page 391, of said Bill of Exceptions.

Plaintiff's Nos. 227, 228, after line 29, page 391 of said Bill of Exceptions.

Plaintiff's No. 229, after line 15, page 394, of said Bill of Exceptions.

Plaintiff's Nos. 232, 233, 234, after line 18, page 394 of said Bill of Exceptions.

Plaintiff's Nos. 235, 236, after line 16, page 396 of said Bill of Exceptions.

Plaintiff's Nos. 337, 338, after line 15, page 397 of said Bill of Exceptions.

Plaintiff's Nos. 239, 240, after line 10, page 398 of said Bill of Exceptions.

Plaintiff's Nos. 241, 242, after line 28, page 406 of said Bill of Exceptions.

Plaintiff's Nos. 246, after line 14, page 408 of said Bill of Exceptions.

Plaintiff's Nos. 254, 255, 256, after line 28, page 409 of said Bill of Exceptions.

Plaintiff's No. 266, after line 20, page 415 of said Bill of Exceptions.

Defendant's No. A-9, after line 5, page 59 of said Bill of Exceptions.

/

Dated at Seattle, Washington, this day of
October, 1943.

J. CHARLES DENNIS

United States Attorney

G. D. HILE

Asst. United States Attorney

JOHN S. SWENSON

Special Attorney

Criminal Division

Department of Justice.

[Endorsed]: Filed Oct. 26, 1943. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL

Comes now the appellant and adopts his Assign-
ments of Error heretofore filed herein as his points
on appeal.

BERNE E. JOHNSON

Attorney for Appellant

1205 Rust Building

Tacoma, Washington

Copy received this 22nd day of November, 1943.

J. CHARLES DENNIS

United States Attorney

JOHN S. SWENSON

Special Attorney.

[Endorsed]: Filed Nov. 24, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT CERTAIN ORIGINAL EXHIBITS NEED NOT BE PRINTED IN TRANSCRIPT OF RECORD.

Upon consideration of the stipulation of counsel for respective parties, and it appearing therefrom that the exhibits relied upon by the respective parties which are capable of economical reproduction will be reproduced within the printed transcript of record, and good cause therefor appearing,

It Is Ordered that such original exhibits relied upon by the parties which can not be economically reproduced need not be included within the printed transcript of record but will be considered by this Court on this appeal in their original form.

Dated: San Francisco, Calif., January 26, 1944.

CURTIS D. WILBUR

Senior United States Circuit
Judge.

[Endorsed]: Filed Jan. 27, 1944. Paul P.
O'Brien, Clerk.

In The United States
Circuit Court of Appeals
For the Ninth Circuit

H. HARRY MEYERS,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellant

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, SOUTHERN DIVISION

FILED

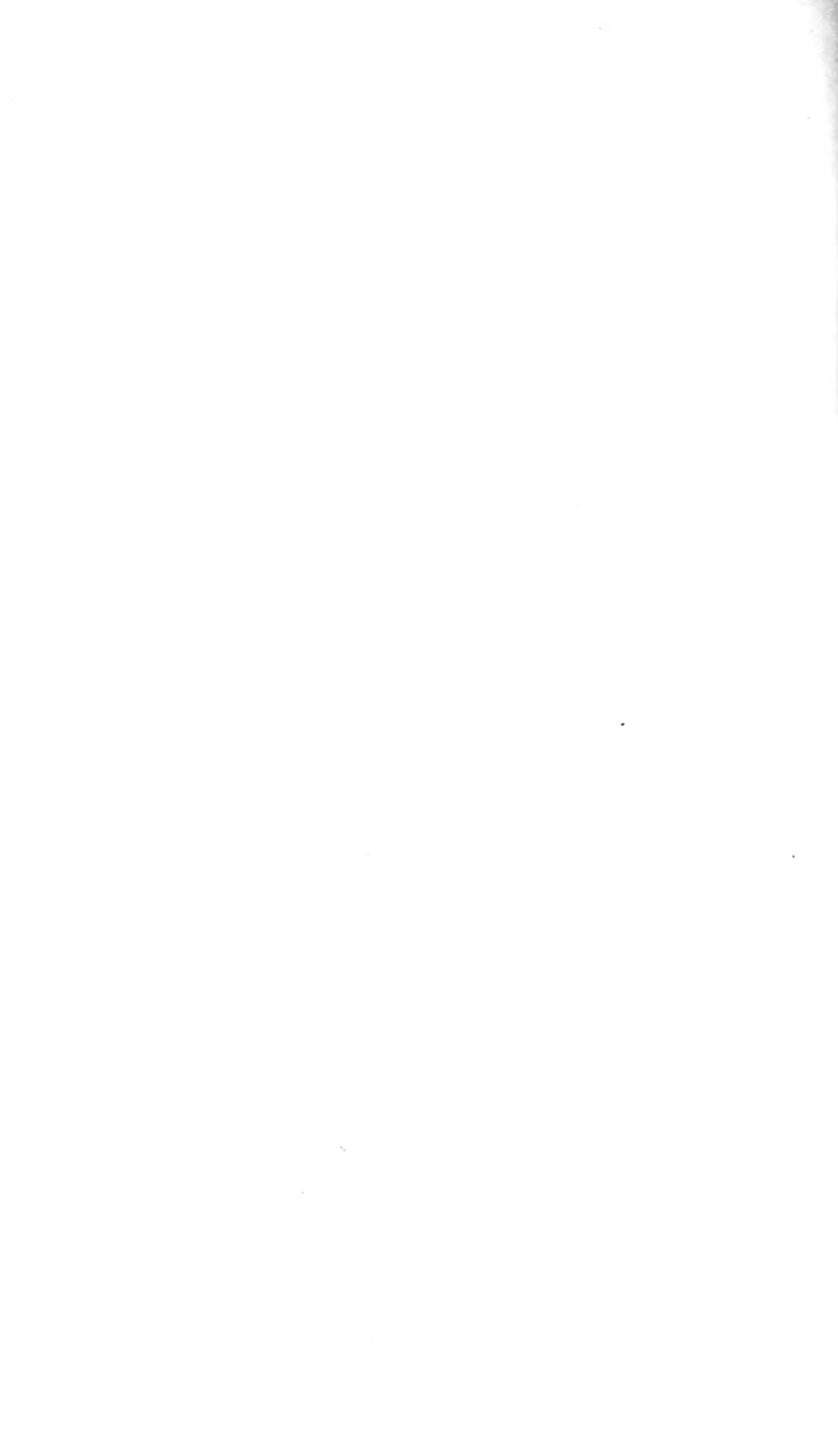
APR 27 1944

HONORABLE CHARLES H. LEAVY, *Judge* P. O'BRIEN,
CLERK

BERTIL E. JOHNSON,
Attorney for Appellant.

Office and P. O. Address:

1205 Rust Building, Tacoma 2, Washington.



In The United States
Circuit Court of Appeals
For the Ninth Circuit

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellant

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, SOUTHERN DIVISION

HONORABLE CHARLES H. LEAVY, *Judge*

BERTIL E. JOHNSON,
Attorney for Appellant.

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Title 28 U. S. C. A., Sec. 41-----	1
Title 28 U. S. C. A., Sec. 723 (a)-----	1

TEXTBOOKS:

20 American Jurisprudence, Sec. 452, page 400	34
20 American Jurisprudence, Sec. 454, page 403	34

CONSTITUTION:

Fifth Amendment to Constitution of United States -----	47, 48, 49
Fourteenth Amendment to Constitution of United States -----	49

In The United States
Circuit Court of Appeals
For the Ninth Circuit

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellant

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, SOUTHERN DIVISION

STATEMENT CONCERNING JURISDICTION

The appellant was indicted (Tr. 2) and convicted (Tr. 71 and 72) for violation of Sections 338 and 88, Title 18, United States Code. The jurisdiction of the District Court is sustained by provisions of Title 28, Section 41, of the United States Code Annotated and the jurisdiction of this Court by the provisions of Title 28 Section 723 (a) United States Code Annotated and the rules promulgated by the Supreme Court of the United States pursuant thereto.

ABSTRACT OF THE CASE

The appellant and several others were charged by indictment for ten violations of the Mail Fraud Statute, two violations of the Securities Act of 1933 as amended, and the crime of conspiracy to violate both the Mail Fraud Statute and the Securities Act as amended.

The jury, by its verdict, found the appellant guilty of ten counts of mail fraud violation, not guilty of two counts charging violation of the Securities Act and not guilty of conspiracy to violate the Mail Fraud Statute and the Securities Act.

In the interest of brevity the Peoples Gas and Oil Corporation will hereafter be referred to as the Corporation, the Peoples Gas and Oil Company as the Company, the Peoples Gas and Oil Development Company as the Development Company, and the Peoples Drillers, Inc., as the Drillers.

The indictment (Tr. 3) in the first ten counts charged that the defendant and eight others had devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretense, representations and promises from a class of persons whom they might induce to invest in one or more oil promotion enterprises in the States of Washington and California. That the scheme, and, or, artifice so devised was briefly as follows:

That the defendant would go to the State of Washnigton and acquire assignments to himself and others and to corporations to be organized and controlled by himself and others, of oil and gas leases in the State of Washington, would operate four inter-allied corporations—the Company, the Corporation, the Development Company, the Drillers (Tr. 4), and through them conduct a campaign for the sale of leases, collcet money from such investors, enticing them to buy by alluring, misleading and false pretenses and promises, would start and continue to drill a well, that they represented that the defendant, H. Harry Meyers (Tr. 4) was a man of standing and experience in the financial and busineses world, had previous accomplishments in great public enterprises, that he had great wealth and that (Tr. 4-6) he would, out of his own personal funds, pay all expenses for drilling said well. That H. Harry Meyers was so convinced from his careful investigation of the Frenchman Hills district, that he decided to pay all drilling costs of the first oil well in said district (Tr. 6) and that he was so paying out of his own funds, all drilling expenses (Tr. 7) and would so continue until the well had been completed, and in the event the first well was not succuessful he would continue, if necessary, to drill additional wells (Tr. 7). That he, the said H. Harry Meyers, was a principal in the great engineering firm of Joseph B. Strauss and associates of San

Francisco, builders of the Golden Gate Bridge (Tr. 7) and that he was entitled to chief credit for developing and creating the great Golden Gate Bridge enterprise.

They further represented that there was an alleged advisory board of eminent geologists (Tr. 5) and petroleum engineers under whose advice they were operating, that William A. Brown was a great geologist and engineer, that there were showings of oil and/or gas encountered (Tr. 5) and that investors would be made wealthy.

It was further alleged that all of said representations were false and fraudulent, that the said H. Harry Meyers was not a principal in or connected with the engineering firm of Joseph B. Strauss and associates (Tr. 8) and was not entitled to chief credit or any credit for developing and building the Golden Gate Bridge, and that said defendant was not interested in the investors but was far more interested in the success of the selling campaign (Tr. 8).

It was further alleged that William A. Brown was not a geologist or petroleum engineer (Tr. 10) nor did he have any experience as a geologist or petroleum engineer, that no gas or oil showings were encountered (Tr. 8-10-11), that no advisory board was ever employed and that there were no encouraging findings of gas and oil (Tr. 11).

It was further alleged that as a part of said scheme and artifice the defendants would hold open meetings, at which the defendants would make public addresses, reporting splendid progress, and that since Meyers was furnishing all the money for drilling operations the enterprise would be successful, that the investment in a lease was speculative (Tr. 13) and that no one who could not afford to take a chance was not wanted and should not invest, but that the operations were so fairly conducted and the prospects so good that anyone who failed to do so ought to have their heads examined, and that such representations were not true in fact (Tr. 13).

It was further alleged that the defendants would arbitrarily raise the price of leases to induce investors to purchase the same (Tr. 14) and that by reason of such representations did induce 30,000 investors to subscribe for and purchase leases (Tr. 14), and would later induce the investors to convert their leases into stock in the Development Company, with intent to defraud them (Tr. 15).

It was further alleged that the defendants would appropriate large sums of money to their own use in the form of dividends, high salaries and commissions, and manipulate the books and records of the various corporations, and other California Corporations operated by them, in such a manner as to conceal the source of said funds (Tr. 15.)

It was further alleged that as a part of said scheme, when the collections from lease purchasers dwindled, that H. Harry Meyers would withdraw from the enterprise and disregard his promise to finish the well or wells and induce investors to become directors of the Development Company and leave the responsibility for further collection and drilling to them (Tr. 16).

It was further alleged that in furthering said scheme and artifice the Defendants caused certain letters to be deposited and delivered through the United States Mails. (Tr. 18 to Tr. 60 inc.)

The time during which these violations took place was alleged to be from December 5, 1935 to September 21, 1937.

Count XIII charges that the defendants conspired continuously from March 27, 1934 to on or about the 22nd day of October, 1937, to violate the Mail Fraud Statute Section 338, Title 18 United States Code and the Securities Act of 1933 as amended, as set forth in Counts I to XII, inclusive (Tr. 61 to 67).

EVIDENCE

The evidence, so far as this appeal is concerned, may be briefly stated as follows:

That prior to 1931 W. Gale Matthews, a thoroughly reputable abstractor in Ephrata, Washington, be-

believing there was oil possibilities, because of conversations with geologists and petroleum engineers, and by reason of gas seepages in the area and production of gas in Rattlesnake Hills (Tr. 210 and 1212-1213), gathered together approximately 135,000 acres of oil leases in the Frenchman Hills area (Tr. 210-11). In 1931 Mr. Willaim A. Broome first came to Matthews in reference to the leases, and in 1932 he assigned said leases to Broome, and placed them in escrow, there being no money consideration (Tr. 211), for a consideration consisting of an over-riding royalty on all leases, and a share in production if there was production (Tr. 211). Broome spudded in a validation well and proceeded along for about a year, and then stopped, and in 1933 Matthews brought action to cancel the assignments but did not take judgment, later dismissing his action (Tr. 1216). Broome made several efforts to interest oil companies in California but met with little success, and in late 1933 he met H. Harry Meyers. Meyers had several conferences with Broome regarding the possibilities of oil and gas in the area (Tr. 1326-28), Broome representing himself to be an oil man (Tr. 1326-27), showed Meyers maps, opinions of geologists and petroleum engineers and a report by Roberts (Ex. A-30) recommending the area for development (Tr. 1327). In February, 1934 Meyers went to Seattle and discussed the matter with Gale Matthews who showed him numerous geological reports

and reports of petroleum engineers (Ex. A-169 to 178 inc.), (Tr. 212-1217-1218). He also told Meyers that he believed in the development of that region, and that there was a good possibility that the area contained oil and gas. That the structure was big, and if there was anything it was in large quantities. He told him of the investigation he had made and the literature which he had read on the subject.

Meyers assured Matthews that he would see that a fair and honest investigation of the structure was made if he made the deal, and as far as Mr. Matthews was concerned Meyers did keep his commitments and did give it a fair and honest investigation (Tr. 1216-17-1328).

After the conference with Matthews, Meyers returned to Los Angeles about the middle of March, 1934, and communicated with Mr. Markowitz and Black, and as a result plaintiff's Ex. 8 was executed about the 16th of March, 1934, as a preliminary agreement (Tr. 1329). They were to organize three companies, viz.: Peoples Gas & Oil Corporation, Peoples Gas & Oil Company, Peoples Gas & Development Company, all of which were organized. The incorporators of said companies were as follows: The corporation—William Markowitz, Samuel Markowitz, B. Blank; The Oil Company—Joshua F. Simon, A. Clayton, I. B. Toub, and the Development Company—R. M. Zeitlin, Lewis Roth and W. A. Broome.

The original capital for the conduct of the business of all three companies, \$20,000.00, was furnished by Lewis Roth and H. Harry Meyers, as follows: Mr. Roth purchased a Cashier's check for \$10,000.00, which was indorsed payable to the Atkins Corporation, and on the same day H. Harry Meyers gave two checks in the sum of \$5,000.00 each, which were likewise deposited to the account of the Atkins Corporation. The checks were delivered to Mickey Black, who was Meyer's attorney, and the forming of the corporations was in the hands of said Mickey Black (Tr. 1329-30).

Thereafter Mr. Meyers told Mr. Markowitz that he could not devote a great deal of time to the sale of leases and it was agreed that the sale of leases was to be conducted by Markowitz, and that Broome and Meyers would undertake to drill the well.

They finally agreed that the Company should pay \$65,000.00 for the 135,000 acres (Tr. 1330). The original agreement between the parties, being plaintiff's Exhibit 8, was supposed to have been destroyed by Black, which was to finish the contract and act as a rescision, and under the new arrangement Meyers was to dig the well at an estimated price of \$175,000.00, through the Development Company, and the leases were to be sold by the Company and the Company was to pay to the Development Company \$65,000.00 for the leases (Tr. 1330-31).

Meyers thereafter had no control or anything to do with the books or accounts of the oil company or the corporation (Tr. 1334).

Shortly thereafter defendant Joshua Simons went to Denver, Colorado, where he purchased a Standard Cable Drilling Rig, which was installed at the well, and later was supplemented with a Heavy Duty Rotary Rig. The cost of this equipment was credited to the \$65,000.00 note given for the purchase of the leases. The equipment used in the drilling operations was first class equipment and the best that could be obtained for the drilling operations (Tr. 452). The crew was competent and everybody gave his best effort in drilling the well (Tr. 452), and the well was drilled to a depth of 4,575 feet.

Many leases were sold by the Company to investors and it was soon discovered that leases were an awkward form of investment, because of the title involved and if the owner of a lease died it was necessary to probate his estate to clear the title, all of which entailed expense disproportionate to the cost of the lease, and to meet these objections, and upon the advice of Dwight Hartman, a reputable practicing attorney in the city of Seattle, it was decided that the Development Company increase its stock from 640 shares at \$1.00 par value stock, to one and one-half million shares of non-par value, and the stock was then offered in exchange for leases on

the ratio of 8 shares of stock for each acre, and practically all of the leases were converted into stock in the Development Company (Tr. 1223).

H. Harry Meyers and W. A. Broome organized the Peoples Drillers, Inc., in order to continue the drilling of the well, and the Development Company then conveyed the drilling equipment and well-site to the Drillers, and Meyers and Broome surrendered all of their stock in the Development Company and the drilling of the well was continued by the Drillers.

By October, 1936, there had been expended in drilling at Frenchman Hills approximately \$270,000.00 (Tr. 1152), of which Meyers had paid cash of approximately \$196,000.00 exclusive of the \$65,000.00 due from leases (Tr. 1144-1145-1160-1169), and an agreement was entered into, by the terms of which the Development Company took over the drilling of the well, and to enable it to do this the Drillers re-conveyed the drilling equipment and well-site to the Development Company, with a proviso, however, that if the Development Company should abandon drilling operation, the Drillers should have the right to the return of the drilling equipment and well-site to continue the well. At the same time the Company assigned to the Development Company approximately \$535,000.00 worth of outstanding accounts receivable from Leaseholders (Tr. 1166), and in exchange therefor the Company was

to receive a royalty of 1% of production for each \$30,000.00 of the accounts which should be collected, not exceeding, however, a total royalty of 10% and a 22½% royalty theretofore held by the Development Company was reduced by that amount.

Leases were sold through the various sales offices in cities of the State of Washington and a total of 35,000 leases were sold . The Company received from the sale of leases and fees, for the period from April 7, 1934 to October 15, 1936, \$1,715,176.02, out of which all expenses were paid, and the uncollected portion, in the amount of approximately \$535,000.00, as of October 15, 1936, was turned over to the Development Company. The Development Company from October 15, 1936 to October 22, 1937, collected the sum of \$192,708.07 (Tr. 1160).

Joshua F. Simons and Wm. Markowitz were the executive heads of the Company and the Corporation. H. Harry Meyers furnished to the Development Company and Peoples Drillers, Inc., the total sum of \$196,000.00 (Tr. 1160). All of the original stock of the Development Company, before the increase in capital stock, was owned by Meyers and Broome, and the stock of the Drillers was likewise owned by Meyers and Broome.

In October of 1937, a receivership was appointed for the Corporation and the Development Company,

after indictments were returned against the defendants in the original cause.

In the course of the sales campaign, talks were given by the defendants at public and sales meetings. the defendant, H. Harry Meyers appearing, however, on only four or five occasions, the majority of the meetings having been addressed by W. A. Broome, who, incidentally, was acquitted in the first trial of this action.

Insofar as this appellant was concerned there were witnesses for the Government, most of whom had a different version of what was said concerning him, although they attended the same meetings, who testified that H. Harry Meyers was behind the drilling program, that he was a man of wealth, easily able to carry on a thorough and adequate test of the area, and that he was financing the drilling expense entirely out of his own funds; that he was one of the principals in the construction of the Golden Gate Bridge; that he was a great engineer, and that he was going to finance the Cascade Tunnel (Tr. 399-401-----).

That H. Harry Meyers was going to put down six wells (Tr. 373). Others testified that he was going to put down so many wells that the area would look like a Swiss cheese (Tr. 339-344), that he was going to finance the well if they had to go to China. That Meyers was worth 25 million dollars (Tr. 370).

That Meyers was interested in the development of the natural resources of the State of Washington, and that he wanted to secure a following so that he could promote and construct the Cascade Tunnel (Tr. 359-360).

Others testified that Meyers in his statements referred to his past experience and said that he had been instrumental in helping along bridges and things of that sort, including the Golden Gate Bridge (Tr. 360). That Meyers said that the structure looked good and he was there to finance and help develop it (Tr. 354-355). Meyers was not a good speaker and did not speak very often (Tr. 355). Meyers was one of the world's greatest bridge builders (Tr. 349). Meyers never stated that he, himself, had built any bridges, and that most of the representations made concerning Meyers were made by W. A. Broome. Several witnesses testified that the statement made concerning Meyers and the Golden Gate Bridge, was that he was connected with the Golden Gate Bridge.

Practically all of the witnesses for the Government testified that at practically every meeting Mr. Broome, or one of the other defendants, including defendant Meyers, stated: "Oil is speculative and we think this is oil. If you can't afford to speculate keep your money in your pocket." (Tr. 391, 1238.)

Some witnesses testified that a statement was made as follows: "Oil is speculative. We think this is oil. If you can't afford to speculate keep your money in your pocket, but if you wake up some morning and hear the newsboy shouting, 'Oil in Washington,' and your neighbor who speculated gets up and starts on a trip around the world, just take a couple of aspirins and go back to bed because you couldn't afford to gamble." (Tr. 310.)

Others who attended the same meetings testified that the representation made was

"If you cannot afford to speculate or gamble, stay out." (Tr. 391-1275.)

"That no one could tell whether or not there was oil, only the drill would tell the story." (Tr. 374.)

At every meeting it was said that "it was a speculation." (Tr. 1238.)

There was during the course of the trial a great deal of testimony concerning Meyers' connection with the Golden Gate Bridge, and the Government offered testimony by several members of the Golden Gate Bridge and Highway District that they had never seen Meyers appear before the Board or any committee up to the time that Joseph B. Strauss was appointed as engineer for the bridge (Tr. 587-665-670-676-680).

There was other testimony that his name was mentioned in a meeting of the Bridge Board after Strauss had been appointed (Tr. 680). That Meyers was seen with Strauss in the Palace Hotel during the negotiations for the selection of an engineer for the Golden Gate Bridge, and that George H. Harlan, attorney for the District, was introduced to Meyers by J. B. Strauss in February or April, 1929 (Tr. 559).

There were a number of exhibits filed of personal correspondence between J. B. Strauss and H. Harry Meyers (Defendant's Ex. A-51-52-53-54, A-56-57-58-67 to A-105 inc.) (Agency Agreements signed by J. B. Strauss and H. Harry Meyers, Defendant's Ex. A-51-52-53-56-57 and 58). (Tr. 573 to 584 incl.).

It was conceded by the Government that Meyers had an agreement with J. B. Strauss for the securing of the contract for Strauss as Chief Engineer of said bridge and in doing other work in connection with the Golden Gate Bridge, by the terms of which Strauss was to pay Meyers for his services the sum of \$220,000.00. That there was actually paid to Meyers the sum of \$176,891.00, and that Meyers was finally forced to sue Strauss in the year 1934 (Tr. 1293) for payment of the money due him for such services as were rendered by H. Harry Meyers.

The Court allowed, over the objection of defendant, the Government, respondent herein, to introduce a letter, Plaintiff's Ex. 98, dated June 2, 1937 (Tr.

865-871, inc.), addressed to J. S. Swenson, Post Office Inspector, and signed by J. B. Strauss, which letter reads as follows:

“June 2, 1937

Mr. J. S. Swenson
P. O. Inspector
Post Office Department
Seattle, Washington

My dear Mr. Swenson:

Your letter of March 27 has been received. I have had so much on my hands during these last months prior to the opening of the Golden Gate Bridge to traffic that it has been impossible for me to give attention to other matters.

My connection with Meyers was an unpleasant experience which I have sought to put out of my mind. I have known him only since 1928. He had recommendations from General Goethals, whom I knew very well, and he was introduced to me at San Francisco. At that time he claimed to represent Eastern capitalists, but I have no evidence as to this other than his own statement. He was then an applicant for a private franchise for a bridge from San Francisco to Oakland. Beyond that he had apparently no business interests. The man has a pleasing personality and is a glib talker and claimed intimate acquaintance with royalty and people of prominence abroad and in the United States, most of which, in my opinion, was purely talk. Later I was informed that his birthplace was a small town in Indiana, from which he ran away at the age of thirteen to join a circus and then engaged in a patent medicine business selling pills, which seemingly is responsible for the title of “Doctor.” He never attended college and holds no degree of any kind, so far as I know.

As respects the Golden Gate Bridge, my work on this project began in 1918.

I did not meet Meyers until the latter part of 1928, by which time all the preliminary work on the project had been done. I had been appointed Engineer for the Citizens' Committee organized in 1923 to promote the project and was authorized in 1924 by the Counties of San Francisco and Marin jointly to apply for a War Department permit and prepare the necessary plans, had conducted the War Department hearing, served the Citizens' Committee in all its activities, acted as expert witness in all the litigation. As a result of these activities the District as formed in the month of December, 1928.

By that time the opposition had intensified to the extent that they had organized a widespread campaign against the bridge project and myself, using every means in their power to defeat the project. Meyers, who happened to be in San Francisco in connection with certain promotional activities on a bridge to Oakland, persuaded me that he could be of great assistance as public relations counsel in off-setting the hostile propaganda, in molding public opinion and in helping the bond issue campaign in general. By reason of what I had been told and the recommendation by General Goethals, I accepted these statements at face value. That I was misled, later developments showed.

The nature of his employment by me was on a contingent basis. Had he capably performed the promised services, there is no doubt but that the compensation originally agreed upon, while considerable, would have been justified by the character of the project and its magnitude and uncertainties. Under my arrangement with him, assuming my retention as Engineer and the successful promotion of the project,

there was to become due him, according to his estimate, a sum total of \$220,000. This computation was objected to by me at the time but because of the distance I had gone in the development plans and my desire for harmony, I accepted the estimate. Since then, and in view of the revelation to me of the falsity of his representations and his failure to comply with some of his promises, and his inability and failure to render services, I entered into litigation over payments becoming due. On the advice of my counsel, the litigation was settled and compromised and an agreement of settlement signed. At the time, Meyers was paid \$15,000, and if he complied with the terms of said agreement, an additional sum of about twice that much is yet to be paid.

If what you tell me concerning his recent misrepresentation is correct, then Meyers has breached the settlement agreement. I am now investigating that feature and I shall appreciate your assistance in discovering the facts.

Meyers never had any contact with the Bridge District. He is in no way responsible for the conception of the project, its development, its financing or its consummation. Meyers was to offset the opposition against myself personally and my arrangement with him had nothing to do with the project proper. The opposition had tried to prevent my appointment as Engineer and had made me the target for attack.

The Golden Gate Bridge was conceived, developed and carried through by me, and until 1929, when I was appointed Chief Engineer, I received no compensation whatever and paid all costs myself, and what I have received since then will be scarcely sufficient to enable me to break even. In my opinion, Meyers did nothing for the bridge except to hurt it, and one of the

reasons for many difficulties I have had to contend with, is the association that I entered into with Meyers.

Meyers at no time had any connection, real or imaginary, with the Strauss Engineering Corporation or with Strauss & Paine, Inc. At no time that I have known him has he been possessed of any means. On the contrary, he was continually claiming to be in need of money, and it was on this basis he succeeded in extracting from me much of the money that he collected.

Meyers had the habit of painting rosy pictures of his contacts, his influence and the large amounts due him from various people and his ability to close up and secure business, none of which, in my opinion, had any foundation in fact.

Yours very truly,

JBS-m JOSEPH B. STRAUSS (Tr. 866)"

Joseph B. Strauss was not a witness at the trial.

The Government was further allowed, over the objection of the defendant, to introduce a book (Plaintiff's Ex. 95) which purported to be a report on the building of the Golden Gate Bridge, prepared by Joseph B. Strauss. This evidence was introduced for the purpose of trying to negative the representation that H. Harry Meyers was connected with the building of the Golden Gate Bridge.

During the progress of the trial the Court also permitted the witness, Troeger, to testify to transactions had by H. Harry Meyers in connection with

the Translux Company, Lux Products Company and the American Lux Products, and the transactions had with his father, Ernest A. Troeger, when H. Harry Meyers purchased an invention from Mr. Troeger Sr. All of these transactions took place in 1920, and apparently were introduced for the purpose of showing similar transactions in the organization of similar corporations as were organized in this case, and for the further purpose of attempting to show that H. Harry Meyers had defrauded John F. R. Troeger. (Tr. 899-932 inc.)

The defendant, appellant herein, produced witnesses in his defense, who testified that H. Harry Meyers was a man of means, and that he had had considerable business experience.

Mr. Hopkins, who had been an associate of Mr. Meyers for a number of years, testified that he first met Meyers in 1914, when he, Hopkins, was trying to finance a Cleveland Highway System, and Meyers was introduced to him as a man who probably could help him secure financial backing. (Tr. 1257). That he checked on Meyers and found he had access to some of the best investment associations in New York, had their confidence and was in good standing, and that Meyers introduced him to four or five investment houses, all of whom were capable of financing his project.

He further testified that Meyers knew many mi-

portant people in the United States and abroad, and that Meyers was in their confidence and was well considered. (Tr. 1258.)

In 1915 Meyers and Hopkins engaged in a manganese proposition and Meyers was the Treasurer of the Seaboard Steel, and that he was familiar with Meyer's activities in the Translux enterprise. (Tr. 1260.)

That in the financing of the U. S. Manganese and Union Manganese companies Meyers had put up between \$30,000.00 and \$40,000.00, and from 1917 to early in 1921 Meyers received a salary of \$12,000.00 a year as Treasurer of Seaboard Steel. (Tr. 1266.)

Meyers testified that he had been interested in a number of business and financial enterprises in the United States and Europe, and that in 1914 when he left England he had cash of approximately \$375,000.00. (Tr. 1314.)

That between that time and 1923 he had been interested in several enterprises including the Translux, in which he made a profit of some \$150,000.00 to \$200,000.00. (Tr. 1317.) In 1925 he was married and he gave to his wife, over a period of several months, the sum of \$250,000.00 (Tr. 1317.)

That at the time he became interested in the development of Frenchman Hills he had in safety

deposit boxes and other securities the sum of \$400,000.00. (Tr. 1340-1343.) That he expended in the drilling operations from his own funds, approximately \$200,000.00.

That in 1925 he came to San Francisco and formed the New York-San Francisco Development Company, in which Judge Golden and Herbert Rothschild were also interested, for the purpose of securing a contract for the building of the San Francisco Bay-Oakland Bridge, and that his company had a permit from the War Department to build said bridge from Hunter's Point in San Francisco to High Street in Alameda. That General George M. Goethals, who was the construction engineer of the Panama Canal, was retained by his company as engineer. That the application for the San Francisco-Oakland Bridge was rejected and he had no further dealings on that particular project. (Tr. 1318-19.)

In the latter part of 1928 or the first part of 1929 he was associated with Joseph B. Strauss in securing a background for the building of the Golden Gate Bridge and securing the contract for Strauss as Chief Engineer on the project. (Tr. 1320.) That he entered into contracts with Strauss (Defendant's Exhibit A-56-57-58, Tr. 1355) the first one being March 11, 1929, by the terms of which he was to receive, should Strauss be appointed as Chief Engineer of the bridge, the sum of \$220,000.00. That

Strauss was appointed as Chief Engineer and he was paid under those contracts approximately \$200,000.00, and that by reason of the fact that Strauss did not pay him his fee as agreed upon, it was necessary that he bring an action against Strauss for collection on said contracts.

It was in 1935 that he retained as his attorney, Nat Schmulowitz, and as a result of said action a further agreement was entered into between Meyers and Strauss dated March 30, 1935, (being Defendant's Ex. A-180, Tr. 1296), by the terms of which it appears that the balance owing at that time on the original \$220,000.00 fee was \$43,109.65, and by the terms of that agreement the said amount was to be paid off at the rate of 15% of all future installment progress payments as, if and when the same were received by Strauss from the Golden Gate Bridge and Highway Districts.

In connection here, it is well to note that George B. Harris, who actually handled the transaction as attorney for Mr. Meyers, testified that there was never any question about the services having been performed, but that the entire discussion was with reference to an accounting and the amount actually due. (Tr. 1305-1307.) Payments were made under that agreement (Defendant's Ex. A-180) in the amount of approximately \$13,000.00.

In 1937 it was again necessary to institute suit

against Strauss to enforce the provisions of the agreement. (Defendant's Ex. A-180), and shortly thereafter Strauss died, and on a claim that was filed against his estate there were further payments made. (Tr. 1306.)

Meyers testified that in connection with his work on the Golden Gate Bridge he made many contacts, but most of his work was through Gavin McNab and Tom Finn. (Tr. 1320-22.) That he did work on securing sub-construction bidders (Tr. 1323) and assisted in the financing of the bridge through Rosoff. (Tr. 1322-23.) That he was closely associated with Strauss during the preliminary work and the construction of the bridge. As a matter of fact the two of them had a private code (Defendant's Ex. A-65) which was used by them in their various correspondence. That he, as appears in Defendant's Ex. A-178, had contact with George H. Harlan, attorney for the District, at the request of Mr. Strauss. (Tr. 1321.)

That Defendant's Exs. A-72-75-192-178-81-87-89-93-96-100-101-102, are letters exchanged between Strauss and Meyers in reference to the Golden Gate Bridge.

There was testimony by Edgar Snider, (Tr. 1189), John B. Hartman and A. S. Alfred, that at a dinner given by Meyers in July of 1933, in reference to the proposed Cascade Tunnel, and at which Strauss was

present, that Strauss made the statement: "If it had not been for him (Meyers) the Golden Gate Bridge would never have become a reality." (Tr. 1189-1208-1210.)

With reference to Meyers' activities in the Cascade Tunnel association, there was testimony by Edgar Snider, S. A. Perkins, A. S. Alfred and John P. Hartman to the effect that as early as 1922 Meyers was interested in the development of the Cascade Tunnel and remained interested in the proposed tunnel up to the time of the indictment in this case. (Tr. 1186-88-1209-1325.)

There was submitted a statement of Meyers finances at the time he entered into the drilling operations at Frenchman Hills, showing assets of well over \$400,000.00.

Meyers further testified that he at no time ever made any statement to any person that he was a millionaire or multi-millionaire, nor that he was an engineer, but did believe that at the time he entered into the drilling of the well on Frenchman Hills that he was well able to pay all of the costs of such drilling. That the highest estimate that had been given to him for the cost of drilling said well was \$175,000.00, which he was willing to pay. (Tr. 1330.) That he had nothing whatever to do with the sale of the leases nor did he have any control or super-

vision over the affairs or records of the company or corporation. (Tr. 1334.)

During the progress of the trial and during the direct examination of the Government, respondent herein, there was introduced in evidence, Plaintiff's Exs. 110-G, 110-H and 110-I, being income tax returns for the years 1937 and 1938, which covered the income tax returns for a period subsequent to the return of the indictment in this case, which were certainly not material to the action and in violation of the Fifth Amendment of the Constitution.

ASSIGNMENT OF ERRORS TO BE RELIED UPON

The appellant will rely upon the following assigned errors:

No. 1	Transcript 99	No. 7	Transcript 125
No. 2	Transcript 105	No. 8	Transcript 129
No. 3	Transcript 105	No. 9	Transcript 134
No. 4	Transcript 107	No. 10	Transcript 136
No. 5	Transcript 117	No. 14	Transcript 153
No. 6	Transcript 119		

ARGUMENT

The Court erred in admitting in evidence, over the objection of the defendant, plaintiff's Exhibit 98, and erred in refusing to strike the Exhibit, being plaintiff's Exhibit 98, and in not instructing the jury to disregard the contents thereof, and erred in not granting the motion for a mistrial.

Assignment of Error No. 1 (Tr. 99) and Assignment of Error No. 2 (Tr. 105) are based upon the contention that the Court erred in admitting in evidence, over the objection of the defendant that the same was incompetent by reason of being hearsay, plaintiff's Exhibit 98, and in denying the motion of the defendant to strike Exhibit 98, and in further denying the motion of the defendant that the jury be instructed to disregard plaintiff's Exhibit 98, and the further motion granting a mistrial on the grounds and for the reason that said Exhibit was incompetent by reason of being hearsay.

The testimony in reference to the Exhibit will be found at pages 865 to 871 of the Transcript and also at pages 99 to 105 inclusive of the Transcript.

At the time that the Exhibit 98 was introduced John Sparks, an auditor employed by Joseph B. Strauss, had been called as a witness by the Government on direct examination. When the Government asked Sparks to identify the signature of Joseph B. Strauss and after he had identified the signature of Joseph B. Strauss, plaintiff's Exhibit 98 was offered in evidence, as appears by the Transcript, page 870, and was admitted over the objection of the defendant on the grounds that it was incompetent and hearsay.

Plaintiff's Exhibit 98 is a letter addressed to Mr. J. S. Swenson, Post Office Inspector, dated June 2,

1937, just shortly prior to the first indictment in this cause, and, for sake of brevity, the said letter is referred to being found on page 866 of the Transcript and in the statement of the evidence in this Brief, and in which the said Strauss makes many statements of fact concerning the connection of H. Harry Meyers with the Golden Gate Bridge. It must be remembered that J. S. Swenson was not a party to this indictment; that he was one of the investigating officers; that Strauss was never called as a witness in either the first trial or the second trial of this cause, and that no opportunity whatever was afforded the defendant to be confronted by the said Joseph B. Strauss, or to have the opportunity to cross examine him. It must further be remembered that one of the principal misrepresentations alleged by the Government to have been made was that H. Harry Meyers was connected with the Golden Gate Bridge; that he was connected with the Strauss Engineering Company; that he was one of the principals of the Strauss Engineering Company and that he was connected with Joseph B. Strauss, and that the Government, in order to negative the fact that H. Harry Meyers was in any manner connected with the Golden Gate Bridge, called at least seven witnesses, to-wit: Charles W. Duncan (Tr. 875 to 880); William J. Felt (Tr. 586 to 664); George H. Harlan (Tr. 553 to 585); Thomas Maxwell (Tr. 679 to 680); Will F. Morris (Tr. 551); A. R. O'Brien (Tr. 670 to 672),

with the First and Second Assignments of Error. Assignment of Error No. 5 reads as follows:

“The District Court erred in admitting in evidence, over the objection of the defendant on the grounds that the same was incompetent, irrelevant and hearsay, the Government’s Exhibit 95, being the volume describing the history of the construction of the Golden Gate Bridge.”

Said Assignment of Error is further set forth in the Assignments of Error, pages 117 to 119 inclusive of the Transcript, and the testimony in reference thereto is also found in the Transcript at page 662, 663 and 664.

Plaintiff’s Exhibit 95 was a bound volume purporting to have been a report compiled under the direction of Joseph B. Strauss and was offered by the Government to negative the fact that H. Henry Meyers had any connection with the Golden Gate Bridge or with Joseph B. Strauss by reason of the fact that nowhere in the volume did Strauss mention H. Harry Meyers. The importance that the Government attached to the Exhibit, like plaintiff’s Exhibit 95, is reflected in the fact that Mr. Hile in his closing argument to the jury requested the jurors to read the Exhibit and to ascertain for themselves whether or not Meyers had any connection with the Golden Gate Bridge.

Assignment of Error No. 7 reads as follows:

“The District Court erred in admitting in

evidence, over the objection of the defendant-appellant that the same was incompetent as hearsay, the Government's Exhibit 23, being a letter purportedly signed by Milton Hurwitz for Luther Weedin and purports to rescind a resolution previously passed by the Northwestern Gas & Oil Association."

This Assignment of Error is set forth in full in the Transcript at pages 125 to 129 inclusive. The testimony in reference to the same is set forth on pages 220 to 223 inclusive. This Assignment of Error and the above set forth Assignment of Errors 1, 2 and 5 involve the same questions of law and, therefore, will be considered and discussed together.

The letter, plaintiff's Exhibit No. 23, was a letter purportedly written by the Northwest Oil & Gas Company and signed by Luther Weedin, who was not a witness in this case, purporting to rescind a resolution dated March 19, 1934, which resolution offered the cooperation of the People's Gas & Oil Developing Company, and the letter, plaintiff's Exhibit 23, sets forth the following language:

"It has become obvious through the repeated misrepresentations made by your agents and by the malicious practices of your officers that your conduct here is not in accord with the ethics of honest administration required by this association nor with the spirit of cooperation in which it is organized."

The evidence further disclosed (Tr. 223) that Milton Hurwitz composed the letter and signed the name

of Luther Weedin without submitting the letter to the said Luther Weedin for approval, and that at the time that he, Milton Hurwitz, composed the letter, he was having a dispute with the officers of the People's Gas & Oil Company about sums of money which Hurwitz claimed were due him, and certain it is that no witnesses would have been allowed to testify to the facts set forth in said letter and the opinions expressed therein.

The principal objection to Assignment of Errors 1, 2, 5 and 7 was that they were incompetent by reason of being hearsay evidence.

The rule is well settled that hearsay evidence is not admissible in evidence.

"Hearsay evidence has been defined as that evidence which derives its value not solely from the credit to be given to the witnesses upon the stand, but in part from the veracity and competency of some other person."

20 Am. Jur. at page 403, Sec. 454.

"The general rule is that hearsay evidence is inadmissible."

20 Am. Jur. 400, Sec. 452.

"There are certain exceptions such as dying declarations, statements against interest, original records lost or destroyed, confessions, Res Gestae, expert or opinion evidence, and evidence to prove the age or race of an individual, and boundaries."

The evidence which was admitted in this case did not come within any of the exceptions to the rule.

The real basis for exclusion of hearsay evidence is the fact that hearsay evidence is not subject to the test which can ordinarily be applied for the ascertainment of the truth of testimony, that the declarant is not present and no opportunity for a cross examination is given.

Jennings v. U. S., 73 Fed. (2nd) 470 (C. A. Ga. 1935).

The general rule which excludes hearsay as evidence applies to written as well as oral statements.

Baltimore American Insurance Co. v. Pecos Mercantile Co., 122 Fed. (2nd) 143;

Union Pacific Railway Co. v. Perrine, 267 Fed. 657;

Morris Lessee v. Vanderen, 1 U. S. 64; 1 L. Ed. 38.

Written statements by persons not sworn as witnesses and subject to cross examination are inadmissible as hearsay.

Seals v. U. S., 70 Fed. (2nd) 519 (C. C. A. La. 1934).

Justice Marshall clearly set forth the reason for the hearsay rule in the case of *Mima Queen v. Hepburn*, 7 Cranch 295; 3 L. Ed. 348, in which he states at page 350 of 3 L. Ed., as follows:

“It was very justly observed by a great judge that ‘all questions upon the rules of evidence are of vast importance to all orders and decrees of men: our lives, our liberty, and our property

are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded.'

"One of these rules is, that 'hearsay' evidence is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible.

"To this rule there are some exceptions which are said to be as old as the rule itself. These are cases of pedigree, of prescription, of custom, and in some cases of boundary. There are also matters of general and public history which may be received without that full proof which is necessary for the establishment of a private fact.

"It will be necessary only to examine the principles on which these exceptions are founded to satisfy the judgment that the same principles will not justify the admission of hearsay evidence to prove a specific fact, because the eye witnesses to that fact are dead. But if other cases standing on similar principles should arise, it may well be doubted whether justice and the general policy of the law would warrant the creation of new exceptions. The danger of admitting hearsay evidence is sufficient to admonish courts of justice against lightly yielding to the introduction of fresh exceptions to an old and well-established rule: the value of which is felt and acknowledged by all.

"If the circumstance that the eye witnesses of any fact be dead should justify the introduction

of testimony to establish that fact from hearsay, no man could feel safe in any property, a claim to which might be supported by proof so easily obtained."

Justice Storey, in the case of *Elliott v. Pearl*, 10 Pet. 412, 436; 9 L. Ed. 475, in discussing the question of hearsay evidence, stated as follows:

"Besides requiring oath and cross examination, its fault is that it is peculiarly liable to be obtained by fraudulent contrivances and, above all, that it is exceedingly infirm, unsatisfactory and intrinsically weak in its nature and character."

In the case of *McCarthy Stevedoring Corporation v. Norton, et al*, 40 Fed. Supp. 957, a Dr. Morris signed a written report concerning the injury of a workman; he did not appear as a witness and his report was admitted in evidence over the objection of the plaintiff in that case, and the Court held that it was prejudicial error to admit the report on the grounds that the same was hearsay and the plaintiff was not given the right of cross examination.

In the case of *James Donnelly v. U. S.*, 228 U. S. 243, 708; 57 L. Ed. 820, 1035; 33 S. Ct. 449, 1024, Ann. Case 1913 E 710, the opinion reveals that one James Donnelly had been charged with murder and offered as a defense the confession of an Indian, Joe Dick, who, at the time of trial, was dead. The offer of the confession, however, was excluded by the District Court on the grounds that it was hearsay, and

the Supreme Court of the United States in that case held that the exclusion was proper, stating as follows:

“Hearsay evidence, with a few well-recognized exceptions, is excluded by courts that adhere to the principles of the common law. The chief grounds of its exclusion are, that the reported declaration (if in fact made) is made without the sanction of an oath, with no responsibility on the part of the declarant for error or falsification, without opportunity for the court, jury, or parties to observe the demeanor and temperament of the witness, and to search his motives and test his accuracy and veracity by cross-examination, these being most important safeguards of the truth where a witness testifies in person, and as of his own knowledge; and, moreover, he who swears in court to the extrajudicial declaration does so (especially where the alleged declarant is dead) free from the embarrassment of present contradiction, and with little or no danger of successful prosecution for perjury. It is commonly recognized that this double relaxation of the ordinary safeguards must very greatly multiply the probabilities of error, and that hearsay evidence is an unsafe reliance in a court of justice.”

To the same effect:

C. G. Lewellyn, Collector, v. Electric Reduction Co., 275 U. S. 243; 72 L. Ed. 68, 48 S. Ct. 63.

In the case of *Lucas v. United States*, testimony was received of a statement made by the deceased shortly before his death that he, the deceased, did not belong to the Indian country but had come from Arkansas, and was of Negro blood and not Indian blood. The

Court held that such statement was hearsay and stated as follows:

“But we are of opinion that the evidence put in by the government on this question was not competent. It consisted of statements alleged to have been made by the deceased, in his lifetime, to leFlore, the witness, that he did not belong to the Indian country, but had come from Arkansas. Such statements do not come within any rule permitting hearsay evidence. The trial judge appears to have regarded the testimony as within the rule that declarations of deceased persons made against their interest are admissible—that as a colored man adopted in the Choctaw Nation gets benefits, rights, and privileges, a declaration made by him against that interest would be competent. It may be that, in a controversy on behalf of a deceased negro’s right, or that of his representatives, to participate in the property of the nation, such admissions might be competent. But this case is not within any such rule. The object of the evidence here was not to enforce any rights or claims of the deceased against the Choctaw Nation, but was to sustain an allegation in an indictment, upon which the jurisdiction of the United State court depended.”

Lucas v. U. S., 163 U. S. 612; 41 L. Ed. 282,
16 S. Ct. 1118.

It has been held by this Court that the testimony of a doctor to the effect that the deceased had told him of past pains and his physical condition, although such information was used to assist the doctor in the treatment of his patient, was hearsay evidence and not admissible, this Court saying:

“Such statements of past pain, even if made

to assist a physician to treat the patient, are generally excluded.”

U. S. v. LaFavor, 96 Fed. (2) 425 (C. C. A. Wash.)

The Circuit Court of Appeals for the Fourth Circuit in a case in which the testimony of the clerk of a physician was offered to the effect that the doctor made certain statements during the physical examination of the plaintiff as to the plaintiff's physical condition, was properly excluded as hearsay.

Harris v. U. S., 70 Fed. (2) 889.

It was held that the testimony of a Superintendent that the motorman denied that the accident had occurred was hearsay, and its admission was reversible error.

Amborst v. Cincinnati Traction Co., 25 Fed. (2) 240 (C. C. A. Ohio).

In the case of *Williams vs. Great Southern Lumber Company*, 277 U. S. 19; 72 L. Ed. 761, 48 S. Ct. 417, the Supreme Court held that:

“Statements made by another as to the purpose that the party had in coming to Williams' office made after the killing had taken place were hearsay and were not part of the *res gestae* and were not admissible and, upon that ground, reversed the opinion of the lower court.”

It was also held that the written opinion and diagnosis made by a doctor attached to a deposition were

inadmissible and the admission of such evidence was reversible error.

Vicksburg & Meridian Railway v. Mary O'Brien, 119 U. S. 99, 30 L. Ed. 299.

This Court held in the case of *Ambler v. Bloedel Donovan Lumber Mills*, 68 Fed. (2) 268 (C. C. A. Wash.) that interoffice communications between the principal and the agent, although they may have directly or indirectly related to the shipments made by the principal, were hearsay evidence and not admissible.

It has been held in a long list of cases that statements of persons since deceased were not an exception to the hearsay rule and were inadmissible.

Krug v. Mutual Benefit Health & Accident Ass'n., 120 Fed. (2) 296;

Altmayer v. Travelers' Protective Ass'n. of America, 119 Fed. (2) 1005;

Reliance Life Insurance Co. v. Burgess, 112 Fed. (2) 234;

Aetna Life Insurance Co. v. Quinley, 87 Fed. (2) 732;

London Guarantee & Accident Co. v. Woelfle, 83 Fed. (2) 325.

In *Harrison v. U. S.*, 200 Fed. 662, (CCA 6), at page 673, the Court said, in reversing a conviction in a mail fraud case involving evidence similar to the evidence admitted in this cause, as follows:

"2. A letter from the Assistant Attorney General for the Post Office Department, written to respondent, in June, 1908, in connection with the inquiry then held, and which we have before mentioned, was offered in evidence by the government. Parts were excluded, but enough was received and read to the jury to make clear, either by express statement or by inference, that this official had decided the Easy Way Washer business to be a fraudulent, rather than a legitimate, business, unless saved from that condemnation by the offer of refunds, conditioned only on dissatisfaction, and by the prompt payment thereof. Whether the business, as evidenced by the circulars and advertising, was legitimate or fraudulent, was one of the issues for the jury; and, obviously, what the Attorney General had decided or had said on that subject was, primarily, inadmissible. It is clear, too, that the prejudice to the respondent from putting before the jury the opinion and decision of so high an officer of the government was bound to be very substantial."

In *Hart v. U. S.*, the Court said, in reversing a mail fraud conviction for similar error, the following:

"* * * On February 2, 1914, when matters had gone very wrong with both Oneida Company and Anger Company the attorney for the Anger Company wrote Hart a letter, in which he accused Hart of a considerable number of crimes and falsehoods, and threatened that he would lay the matter before the prosecutor of New York County. Subsequently this attorney had an interview with Hart, at which there was discussion as to the accuracy of the statements of the letter. On this trial, this attorney testified as to his talk with Hart, and the letter aforesaid was admitted in evidence against Hart, as 'a statement made to him.' The reason is a novelty, and the action amounted to permitting

a reputable member of the bar, a man of vigorous personality, substantially to make a speech, stating his very low opinion of one or more of the defendants. There is no pretense that what was said in the letter could have been repeated viva voce by the witness to the jury; yet such was its practical effect when read to the jury, the writer sitting by in the witness chair. This was grave error."

Hart v. U. S., 240 Fed. 911 (CCA 2).

In *St. Clair v. U. S.*, this court held that the admission of a letter written by the Secretary of State to the Mining Company, whose officials were charged with mail fraud, was erroneous, even though the trial Court admitted the letter solely for the purpose, as the Court instructed the jury upon its admission, of allowing the jury to consider the letter of the Secretary of State for the purpose of enabling them to understand the responses made thereto by the defendants and that they should not consider as true, as against the defendants, any statements contained in the letter written by the Secretary of State.

St. Clair v. U. S., 23 Fed. (2)d 76.

In *Nicola v. U. S.*, the Court uses the following language:

"A letter does not prove itself. In order to make it evidence, it must be shown either to have been written by the person against whom it is produced, or by some one authorized to act in his behalf. Neither the authenticity nor genuineness of this letter was established by any evidence. Its admission was clearly erroneous,

and unless it appears 'beyond a doubt that the improper evidence admitted did not and could not have prejudiced the rights of the party duly objecting,' a new trial should be awarded. *Sprinkle v. United States*, (C. C. A.) 150 F. 56, 59; *McGowan v. Armour*, (C. C. A.) 248 F. 676; *Sweeney v. Oil & Gas Co.*, 130 Pa. 193, 203, 18 A. 612; *Boston & Albany R. Co. v. O'Reilly*, 158 U. S. 334, 337, 15 S. Ct. 830, 39 L. Ed. 1006."

Nicola v. U. S., 72 Fed. (2d) 780 (C. C. A. 3);

Granzow v. U. S., 261 Fed. 172 (C. C. A. 8).

We most earnestly, therefore, urge that the admission of plaintiff's Exhibits Nos. 23, 95 and 98, and particularly 98, was prejudicial error and were damaging items of hearsay evidence, so prejudicial that the defendant was necessarily deprived of a fair trial.

The District Court erred in admitting in evidence the testimony of Ernest A. Troeger, who was permitted to testify concerning transactions that happened from fourteen to eighteen years previous to the alleged violations of law in this case.

Assignment of Error No. 4 reads as follows:

"The District Court erred in permitting the witness Ernest A. Troeger to testify on behalf of the Government, over the objection of the defendant that said testimony related to incidents which happened approximately fourteen years before the alleged violation of the postal laws, as set forth in the indictment; that said

testimony was incompetent, immaterial and too remote, the only purpose for said testimony, apparently, was to show a similar scheme and device."

Said Assignment of Error is found on page 107 to 117 of the Transcript and the appendix, and the testimony relating thereto at pages 909 to 921 inclusive of the Transcript.

The Government called Ernest A. Troeger as a witness in direct examination and he was allowed to testify concerning transactions had between the defendant, H. Harry Meyers, and John F. R. Troeger, the father of the witness, said transactions having taken place between the years 1919 and 1923, from fourteen to eighteen years prior to the alleged violations of law charged in the indictment.

This evidence was admitted over the objection that it was too remote in point of time and irrelevant and immaterial, as being evidence of a similar scheme. On this ground, Troeger was allowed to testify, over this continuing objection, that the defendant had represented himself to be a capitalist, that he had given Troeger's father a false promise of lifetime employment, and that he had organized three interlocking corporations which the Government contended constituted a similar scheme to defraud.

None of the foregoing portions of Troeger's testimony, which was most damaging, could have had

any place in the case except on the theory that it related to a similar scheme and was thus material on the question of intent.

The evidence was improper upon the grounds of the objection made at the time that it was too remote for this purpose.

In 80 A. L. R., 1316, numerous cases are collected on the point of the time element as affecting the admissibility of evidence of similar transactions. As appears from this note (p. 1319), in order to be "reasonably close in point of time" the similar transaction must have been within a matter of weeks or months. In *Kercheval v. U. S.*, (C. C. A. 8) 12 Fed. (2d) 904, it was held that an oil lease transfer a year removed from the date of the alleged fraudulent representations was too remote and in *Clarke v. State*, (Ga.), 62 S. E. 663, a transaction three years removed was held too remote.

There can be no doubt we feel but that the Troeger transaction, ante-dating the instant situation by at least fourteen years, was improperly allowed to be brought into this case. That its admission was highly damaging to the defendant can likewise be doubted.

The District Court erred in admitting in evidence plaintiff's Exhibits 110-G, 110-H and 110-I, being the income tax returns for the years 1937, 1938 and 1939, as set forth in Assignment of Error No. 3.

Assignment of Error No. 3 (Tr. 105), reads as follows:

"The District Court erred in admitting in evidence, over the objection of the defendant, the Government's Exhibits 110-R, 110-H and 110-I, being income tax returns for the years 1937, 1938 and 1939, the objection to said admission of said exhibits being on the grounds that the same were incompetent, not properly identified or authenticated and immaterial, and that it violated the constitutional rights of the defendant under the Fifth Amendment to the Constitution of the United States."

Said Assignment of Error is set forth on pages 105 to 107 inclusive of the Transcript and the appendix, and the evidence in refernece therto is found at pages 932 to 935 inclusive of the Transcript.

These exhibits were offered in evidence by the Government (plaintiff) during its direct examination and before the appellant had taken the stand and, apparently, was offered and admitted for the purpose of showing the income, or lack of income, of the defendant for the years 1937, 1938 and 1939, which was the period after the indictment herein had been returned and could not possibly have had any effect or any bearing on the issues in this case, except to attempt to prejudice the jury.

We believe that the reception in evidence, over our objection that the same was in violation of the defendant's immunity from self incrimination under the Fifth Amendment of the Constitution of the

United States, of the defendant's income tax returns for the years 1937, 1938 and 1939, constituted an infringement of defendant's constitutional rights under the Fifth Amendment and also amounted to a violation of the due process clauses of the Federal Constitution.

We admit frankly that we have found no case which squarely passes on this matter. In *Shushan v. U. S.*, (C. C. A. 5), 117 Fed. (2d) 110, 117, a similar contention was overruled by the Court. It appears from the decision in that case, however, that at the time the income tax returns which were admitted in evidence there were made out, no criminal case was pending. The Court is careful to point this out at page 117 of the opinion.

In the instant case, on the contrary, the three returns in question were made, and were required by law to be made *after* an indictment had been returned in this case and while the said indictment was pending. Under penalty of the Income Tax Laws, defendant Meyers could not, on the ground that it might tend to incriminate him, refuse to file an income tax return. *U. S. v. Sullivan*, 274 U. S., 259, 71 L. Ed. 1037.

As a consequence the defendant was required to file these income tax returns, although the indictment was pending against him and we respectfully sub-

mit that the admission in evidence of those income tax returns in this case is in violation of the constitutional rights of the defendant against self incrimination and amounts to an attempted deprivation of his liberty without due process of law in violation of the provisions of the Fifth and Fourteenth Amendments to the Federal Constitution.

The District Court erred and abuse its discretion in unduly and improperly restricting the cross examination of the witness John S. Swenson to establish his animus and bias, as set forth in defendant's Assignment of Error No. 6.

Assignment of Error No. 6 reads as follows:

“The district Court erred and abused its discretion in unduly and improperly restricting the cross examination of the witness John S. Swenson, called on behalf of the Government, in that the Court arbitrarily refused to allow the cross examination of said witness to establish the animus and bias of the witness Swenson.”

Said Assignment of Error is found at pages 119 to 125 of the Transcript and is also set forth in the appendix hereto, and the testimony appears at pages 890 to 898 inclusive of the Transcript.

We submit that the Court erred in denying us the right to attempt to show by cross-examination of Post Office Inspector Swenson, his bias and interest. The Court refused to allow us to show his fixed conviction with reference to the lack of oil in the State

of Washington, his belief that only Major Oil Company would or could honestly find oil in the State, his activity in denying interested persons a right to appear before the Grand Jury and his flouting of the direction of the Attorney General of the United States with reference to a stay of execution for defendant William Markowitz.

The Court stated that it was presumed that a public official did his duty. When we expressed the belief that this was not a presumption of law but only one of fact and that we were entitled to show the interest of the witness Swenson upon cross examination, the Court stated that we could not attack the witness in that fashion. To this we noted an exception.

We respectfully submit that in his ruling, the Court erred.

In *Alford v. U. S.*, 282 U. S. 687, 75 L. Ed. 624, the Supreme Court of the United States reversed a decision of the Circuit Court of Appeals for the Ninth Circuit which had affirmed a mail fraud conviction. The only point discussed in the opinion of the Supreme Court was the matter of cross examination and the Supreme Court held that because the defendant was denied the right to ask a Government witness, upon cross examination, where the latter lived, the conviction should be, and was, reversed.

This case contains a complete and authoritative discussion of the right of an accused to cross examine a Government witness. We believe that it holds that where, as here, the trial Court denied us the right to inquire of a Government witness about a possible basis of a bias or prejudice, such ruling is reversible error and that it does not need to appear that, if pursued, the inquiry would have resulted favorably to the defendant.

The Court erred in rejecting defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, as set forth in defendant's Assignment of Error Nos. 8, 9 and 10.

Assignments of Error Nos. 8, 9 and 10 involve the same principal of law and will, therefore, be discussed together.

Assignment of Error No. 8 reads as follows.

“The District Court erred in rejecting defendant's Exhibit No. A-122 for identification, said letter being dated June 23, 1934, and signed by Ward B. Blodgett, and addressed to W. A. Broome.”

Said Assignment of Error is set forth on page 129 of the Transcript and the appendix hereto, and the evidence in connection therewith is found at pages 1124 to 1126 inclusive of the Transcript.

Assignment of Error No. 9 reads as follows:

“The District Court erred in rejecting defen-

dant's Exhibit No. A-123 for identification, being letter dated June 26, 1934, written by W. A. Broome to Ward B. Blodgett in answer to defendant's Exhibit A-122 for identification."

Said Assignment of Error is set forth on pages 134 to 136 of the Transcript and the appendix hereto, and the evidence concerning the same is found on pages 1124 to 1128 inclusive of the Transcript.

Assignment of Error No. 10 reads as follows:

"The District Court erred in rejecting defendant's Exhibit A-131 for identification, which is a carbon copy of letter dated June 1, 1934, addressed to the witness Dwight C. Roberts, written by W. A. Broome."

Said Assignment of Error is found on pages 136 to 142 inclusive of the Transcript and the appendix hereto, and the evidence in connection therewith is found at page 1133 and 1134 of the Transcript.

These were letters written in the ordinary course of business by Mr. Ward B. Blodgett and William A. Broome, showing the fact that Blodgett was being consulted by Broome in the business of the Company and particularly that in defendant's Exhibit, for identification, No. A-123, Broome, under date of June 26, 1934, stated to Blodgett that his share of the Company had not been determined. This was most important evidence and was corroborative of defendant Meyers' testimony that following the execution of plaintiff's Exhibit 8 in March, 1934, there

had been an agreement changing the relations of the parties. Here, in defendant's Exhibit, for identification, No. A-123, the now deceased Broome, in a letter admittedly written in June, 1934, asserted that the matter of the arrangements between the parties was still unsettled. This was extremely important evidence for the defendant and only the Court's refusal to hear defense counsel on any of the matters of admissibility prevented us from arguing the point at greater length at the time.

Defendant's Exhibit A-131, for identification, was a letter from Broome to Dwight Roberts and had a very definite bearing on the question of a geological committee and the fact that Roberts was to be employed.

Being anxious to avoid the suggestion that we were consciously trying to evade the rulings of the Court in view of the fact the Court stated repeatedly that he did not care to hear argument from us, when he had ruled, we could do no more than to call the Court's attention to the contents of defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, and to except to the Court's refusal to admit them in evidence. Defendant's Exhibits, for identification, Nos. A-122, A-123 and A-131, were clearly admissible, having been properly identified, as being part of the *Res Gestae*.

Hibbard v. U. S., (C. C. A. 7) 172 Fed. 66, 70;

Harrison v. U. S., (C. C. A. 6) 200 Fed. 662, 674;

Gould v. U. S., (C. C. A. 8) 209 Fed. 730, 739;

Patterson v. U. S., (C. C. A. 6) 222 Fed. 599, 648;

Hair v. U. S., (C. C. A. 7) 240 Fed. 533, 536;

McLean v. U. S., (C. C. A. 8) 253 Fed. 694, 697;

Kleeden v. U. S., (C. C. A. 5) 45 Fed. (2d) 87, 88;

Goldstein v. U. S., (C. C. A. 8) 63 Fed. (2d) 609, 614.

The District Court erred in refusing to grant the defendant's motion for a new trial.

Assignment of Error No. 14 reads as follows:

“The District Court erred in refusing to grant defendant-appellant's motion for a new trial. (Tr. 153).”

We submit that the errors complained of in our various Assignments of Error were all important and the admission of the evidence hereinabove discussed was highly prejudicial to the defendant and deprived him of a fair trial, and that the District Court should have granted the motion for a new trial. (Tr. 153.)

CONCLUSION

The failure of the Court to sustain the objection to the admission of the evidence above discussed in our Assignments of Error was clearly prejudicial and deprived the defendant of a fair trial.

The Exhibits, which were admitted over objection, clearly were incompetent and dealt with matters which were of vital importance to the issues of the case. They dealt with matters which were of supreme importance and which must have determined the verdict in this case.

We, therefore, respectfully submit that the judgment of the lower Court should be reversed and that a new trial be granted.

Respectfully submitted,

BERTIL E. JOHNSON,

Attorney for Appellant.

APPENDIX

ASSIGNMENT OF ERRORS

(See Index for Pages)

The appellant, H. Harry Meyers, hereby respectfully says, that in the record of the proceedings before the District Court for the Western District of Washington, Southern Division, before whom the above cause was tried, manifest errors occurred to his prejudice, and that he hereby assigns the following errors, which he avers occurred:

1. That the District Court erred in admitting in evidence, over the objection of the defendant—appellant, Government's Exhibit 98, on the ground that the same was incompetent and hearsay:

Q. (By MR. HILE): Handing you what is marked as Government's Exhibit 98, for identification, I will ask you if you recognize Strauss's signature on that letter?

A. (MR. SPARKS): Yes, that is Mr. Strauss's signature.

MR. HILE: I will also offer Exhibit 98 for identification, and ask the Court to look at it.

THE COURT: Any objection to 98?

MR. SIMON: Yes, on the ground it is incompetent and hearsay.

MR. HILE: I think at least portions of it are [1*] admissible, your Honor, if not the entire Exhibit, in connection with these other exhibits that have been put in by the defense.

THE COURT: Objection will be overruled and it will be admitted as an exhibit.

MR. SIMON: Will your Honor allow us an exception; also does your Honor appreciate to whom this letter was written and the occasion for it?

THE COURT: Yes.

MR. SIMON: I move to strike the exhibit and ask that the jury be instructed to disregard the contents thereof as hearsay, and I move for a mistrial; ask that the jury be withdrawn and a mistrial declared.

THE COURT: Motion denied.

MR. SIMON: Exception.

Exhibit 98 reads as follows:

"Joseph B. Strauss	Clifford E. Paine
President	Vice President
Cable Address,	Bascule, Lift,
Bascule Chicago	Swing and Long
A B C Code Fifth	Span Bridge
Edition	Designs
Bentley's Code	Investigations
	Reports
Richard K. Strauss	Estimates
Contracting Engineer	Supervision

Strauss & Paine, Inc.
Consulting Engineers
111 Sutter Street
San Francisco, Calif.

No. 15187
Plaintiff Exhibit 98

June 2, 1937

Mr. J. S. Swenson
P. O. Inspector
Post Office Department
Seattle, Washington

My dear Mr. Swenson:

Your letter of March 27 has been received. I have [2] had so much on my hands during these last months prior to the opening of the Golden Gate Bridge to traffic that it has been impossible for me to give attention to other matters.

My connection with Meyers was an unpleasant experience which I have sought to put out of my mind. I have known him only since 1928. He had recommendations from General Goethals whom I knew very well, and he was introduced to me at San Francisco. At that time he claimed to represent eastern capitalists, but I have no evidence as to this other than his own statement. He was then an applicant for a private franchise for a bridge from San Francisco to Oakland. Beyond that he had apparently no business interests. The man has a pleasing personality and is a glib talker and claimed intimate acquaintance with royalty and people of prominence abroad and in the United States, most of which, in my opinion, was purely talk. Later I was informed that his birthplace was a small town in Indiana, from which he ran away at the age of thirteen to join a circus and then engaged in a patent medicine business selling pills, which seemingly is responsible for the title of "Doctor." He never attended college and holds no degree of any kind, so far as I know.

As respects the Golden Gate Bridge, my work on this project began in 1918.

I did not meet Meyers until the latter part of 1928, by which time all the preliminary work on the project had been done. I had been appointed Engineer for the Citizens' Committee organized in 1923 to promote the project and was authorized in 1924 by the Counties of San Francisco and Marin jointly to apply for a War Department permit and prepare the necessary plans, had conducted the War Department hearing, served the Citizens' Committee in all its activities, acted [3] as expert witness in all the litigation. As a result of these activities the District was formed in the month of December, 1928.

By that time the opposition had intensified to the extent that they had organized a wide-spread campaign against the bridge project and myself, using every means in their power to defeat the project. Meyers, who happened to be in San Francisco, in connection with certain promotional activities on a bridge to Oakland, persuaded me that he could be of great assistance as public relations counsel in off setting the hostile propaganda, in molding public opinion, and in helping in the bond issue campaign in general. By reason of what I had been told and recommendation by General Goethals, I accepted these statements at face value. That I was misled, later development showed.

The nature of his employment by me was on a contingent basis. Had he capably performed the promised services there is no doubt but that the compensation originally agreed upon, while considerable, would have been justified by the character of the project and its magnitude and uncertainties. Under my arrangement with him, assuming my retention as En-

gineer and the successful promotion of the project, there was to become due him, according to his estimate, a sum total of \$220,000. This computation was objected to by me at the time but because of the distance I had gone in the the development plans and my desire for harmony, I accepted the estimate. Since then, and in view of the revelation to me of the falsity of his representations and his failure to comply with some of his promises, and his inability and failure to render services, I entered into litigation over payments becoming due. On the advice of my counsel, the litigation was settled and compromised and an agreement of settlement signed. At the time, Meyers was paid \$15,000, and if he complied with the terms of said agreement, [4] an additional sum of about twice that much is yet to be paid.

If what you tell me concerning his recent misrepresentation is correct, then Meyers has breached the settlement. I am now investigating that feature and I shall appreciate your assistance in discovering the facts.

Meyers never had any contact with the Bridge District. He is in no way responsible for the conception of the project, its development, its financing or its consummation. Meyers as to offset the opposition against myself personally and my arrangement with him had nothing to do with the project proper. The opposition had tried to prevent my appointment as Engineer and had made me the target for attack.

The Golden Gate Bridge was conceived, developed and carried through by me, and until 1929, when I was appointed Chief Engineer, I received no compensation whatever and paid all costs myself, and what I have received since then will be scarcely sufficient to enable me to break even. In my opinion, Meyers did nothing for

the bridge except to hurt it, and one of the reasons for many difficulties I have had to contend with, is the association that I entered into with Meyers.

Meyers at no time had any connection, real or imaginary, with the Strauss Engineering Corporation or with Strauss & Paine, Inc. At no time that I have known him has he been possessed of any means. On the contrary, he was continually claiming to be in need of money, and it was on this basis he succeeded in extracting from me much of the money that he collected.

Meyers had the habit of painting rosy pictures of his contacts, his influence, and the large amounts due him from various people and his ability to close up and secure business, none of which, in my opinion, had any foundation in fact.

Yours very truly,

JOSEPH B. STRAUSS

JBS-m [5]

2. The District Court erred in denying the motion to strike Exhibit 98 and the motion that the jury be instructed to disregard the same; and the further motion for a mistrial as relating to the above assignment of errors.

3. The District Court erred in admitting the evidence, over the objection of the defendant, Government's Exhibits 110-G, 110-H and 110-I, being income tax returns for the years 1937, 1938 and 1939; objections to said admissions being on the grounds that the same were incompetent, not properly iden-

tified or authenticated, immaterial and violating the constitutional rights of the defendant under the fifth amendment of the Constitution of the United States.

MR. HILE: I would like to offer, your Honor, at this time authenticated copies of 110-B, I think that is the first one of the income tax returns of the defendant Meyers for 1932; 110-C for the year 1933; 110-D for the year 1934; 110-E for the year 1935; 110-F for the year 1936; 110-G for the year 1937; 110-H for the year 1938; and 110-I for the year 1939.

THE COURT: Any objection?

MR. SIMON: I have a special objection to a couple of them, your Honor.

MR. HILE: They are duly authenticated by the various departments, your Honor.

MR. SIMON: I object to them all, and to each and every one, your Honor, for the reason and upon the ground that they are not properly authenticated. And I want particularly to object to——

THE COURT: Is the authentication the same on every one of them?

MR. HILE: Yes, it is. I wouldn't say it is identical, but in each case it is from the Chief Clerk of the Treasury Department. [6]

THE COURT: The Court didn't have in mind whether different individuals were involved.

MR. HILE: Oh yes, it is the same.

THE COURT: The objection on the ground of authentication will be overruled.

MR. SIMON: I wish, if your Honor please, to make a further objection to 110-G, 110-H and 110-I for the reason that—and upon the ground that these are returns which the defendant is under the law required to make, and that they were required to be made subsequent to the return of the indictment in this case, and that their reception in evidence in this case would be in violation of the defendant's constitutional rights against self-incrimination, 4th and 5th amendments to the constitution of the United States.

THE COURT: Overruled.

MR. SIMON: Exception.

THE COURT: Exception allowed. They will be admitted.

(Income tax return for the years 1932 to 1938 inclusive, and 1939 were admitted in evidence as plaintiff's exhibits 110-B to 110-I inclusive.)

MR. SIMON: May it be understood that my objection, you Honor, goes to each of these separately?

THE COURT: Yes, it may be so understood and the record will so show.

MR. SIMON: Exception.

THE COURT: 110 all admitted.

MR. SIMON: May I add to the grounds of the objection to the last three, that the returns made for period subsequent to the return of the indictment are immaterial, as pertaining to the issues?
[7]

THE COURT: Yes. Those grounds will be considered by the Court. Exception allowed.

4. The District Court erred in permitting the witness, Ernest A. Troeger, to testify on behalf of the Government, as follows: Over the objection of the defendant appellant. That said testimony related to incidents which happened approximately 14 years before the alleged violation of the postal laws, as set forth in the indictment; that said testimony was incompetent, immaterial and too remote and the only purpose for said testimony, apparently was to show a similar scheme and device.

Q. Mr. Troeger, I think when we left off we were speaking about what, if anything the defendant Meyers said to your father in your presence, relative to employment. Was there such a conversation?

A. Yes.

Q. Do you recall when this was?

A. At the time that contract was signed, about employment, and previous to that and thereafter.

Q. Have you refreshed your recollection by that contract plaintiff's exhibit——

A. Yes, Sir.

Q. What is the number in red up at the top there?

A. 108.

Q. And what about the dates of the conversations, as you have them in mind?

A. Well, he made this contract and told Dad——

MR. SIMON: Well now, just a minute; That is not responsive to the question, if the Court please. You asked him, as I understand it, counsel, what was the date of the conversation with reference to the date of this contract.

MR. HILE: No, I didn't. I asked him what the dates of [8] the conversations were, and to refresh his recollection by the contract.

A. He promised Dad that he would——

MR. SIMON: I object. That is not responsive to the question.

THE COURT: What date was this?

A. January 22, 1920.

Q. (By MR. HILE): What, if anything, did Dr. Meyers say to your father relative to employment?

MR. SIMON: If the Court please, if this is conversations in the course of the preparation of this contract, then I think the conversation is incompetent under the parole evidence rule.

MR. HILE: The parole evidence rule has nothing to do with this situation. We are not trying to prove this contract from a legal standpoint.

THE COURT: The Court fully understands the contract involved.

MR. SIMON: My point, your Honor, is if the negotiations about employment are material, then it seems to me the best evidence and the

have referred, I will hand it to your Honor. It bears, I think, upon other issues in the case, as to what the occupation of the defendant was in reference to being a financier at this time.

THE COURT: Can the witness inform the Court as to when these matters came to an end?

A. In 1923.

THE COURT: The contract bears date 1923?

A. That is right. That is when the whole thing terminated. That was the final settlement.

THE COURT: The objection will be overruled. This line of evidence will be admitted with limitations. The jury is instructed, of course, that it is admitted not to prove any issue in this case, other than the bearing it might have, if any, upon the element of intent, which is an important element in this case. An exception allowed.

Q. (By MR. HILE): Going back to my question, Mr. Troeger, it was: What, if any, conversations were had by the defendant Meyers in your presence, either with yourself or with your father, or both, concerning employment? [11]

A. Dad was to be employed——

MR. SIMON: Just a minute; I will object to that for the reason and upon the ground that these conversations apparently antedated a written contract, and the written contract was signed and reduced to writing. There isn't any claim that I have heard yet that there was any fraud; that the man who signed the contract did not understand its terms and conditions.

As I understand it, even in a civil case, under those circumstances, the contract which was excluded yesterday is immaterial, fixes the term of the employment. Under those circumstances I don't believe that this witness, nor even the man who signed this contract, can say that he was told that the terms of the contract were to be something other than the solemn, written instrument of the parties at the time. And I object to it as incompetent.

THE COURT: The objection will be overruled and exception is allowed. Proceed.

A. The conversation was along the line,—Dad at that time was 70 years old, and he told him, he says, "Don't worry about a thing. You will always have a job. You will never need to worry about anything. Just leave everything to me. Do this the way I want to go through with it, and you will always have plenty of money, and there will be nothing for you to worry about."

Q. (By MR. HILE): With reference to this agreement, 108 for identification, what is that, if you know?

A. This is a contract for employment for a period of two years.

Q. Do you recognize the signature thereon?

A. Yes, sir. It is signed "Translux Company, Incorporated, by H. Harry Meyers, Vice-President."

THE COURT: The question was: Do you recognize it? [12]

A. Oh, yes.

MR. SIMON: I object to this line of testimony, if the Court please.

THE COURT: The Court has indicated its position on the matter, but of course it doesn't mean that we are going to try out the difficulties that arose in that past period of time.

MR. HILE: No, your Honor, I am not going into that phase of it.

* * * * *

Q. And did you have any conversations with the defendant Meyers relative to the formation of other corporations, that is corporations other than the original company?

A. Yes.

MR. SIMON: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

MR. SIMON: Exception. [14]

* * * * *

Q. And with reference to the exhibits here bearing upon the collection of the notes, that is 103, 104, 105 and 106, I will ask you what, if anything, you did in connection with the collection of the notes referred to in those letters?

A. I went to the bank and tried to get them to discount them.

MR. SIMON: Now, I object to that and move that the answer be stricken, your Honor. We are certainly not bound by the activity of this man with third persons.

THE COURT: The objection will be overruled and motion denied.

MR. SIMON: Exception.

Q. (By MR. HILE: Were you successful or not?

MR. SIMON: I object to that as irrelevant and immaterial.

MR. SIMON: Exception.

Q. (By MR. HILE): Were you successful or not?

MR. SIMON: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

A. The bank wouldn't discount this note without an endorser.

MR. SIMON: I move that that last portion of the answer be stricken as hearsay, incompetent for any purpose, and I ask that the jury be instructed——

THE COURT: Motion denied.

Exception allowed: Let's proceed. [15]

Q. You didn't raise any objection to the fact that this contract provided that the agreement should cease on the 31st day of January, 1922?

A. I did not.

Q. And despite your objection, despite the language of this contract, which you perfectly

understood and your father understood, your father signed this contract and acknowledged it before a Notary Public?

A. That is true.

Q. And at the time he signed it, he knew that it contained those provisions about agreeing to perform the services to the satisfaction of the first party, and also that the employment was to terminate on the 31st day of January, 1922?

A. Yes, that is true.

MR. SIMON: I renew my motion to strike the testimony with reference to these oral conversations.

THE COURT: The motion will be denied and exception allowed.

5. That the District Court erred in admitting in evidence, over the objection of defendant-appellant, that the same was incompetent, immaterial, irrelevant and hearsay, Government's Exhibit 95 for identification, being a volume describing the history of the construction of the Golden Gate Bridge, purportedly compiled under the direction of Joseph B. Strauss, and at the time said Exhibit 95 for identification, was offered in evidence, the following testimony was given:

Q. Handing you what is marked as Government's 95 for identification, I will ask you what this is if you know, Mr. Felt:

A. That is the final report made by Mr. Strauss, Chief Engineer, at the completion of project. [16]

Q. Is that an official report put out by the District?

A. Yes. It was authorized and paid for by the District.

Q. That constitutes an official report on the things it purports to report?

A. It does.

MR. HILE: I offer that in evidence, if the court please.

MR. SIMON: I would like to see it.

Q. (By MR. HILE): With respect to the matter of a bridge bond election, Mr. Felt, the information was set up by the district, the Golden Gate Bridge District?

A. That is correct.

Q. And do you know what, if anything, the defendant Meyers had to do with that?

A. I know of nothing.

Q. Did you at any time ever hear that the defendant Meyers had anything to do with the Golden Gate Bridge?

MR. JOHNSON: I object to that as repetition, your Honor.

THE COURT: He may answer.

A. At what time? What period of time do you refer to?

Q. Well, I am referring to the whole period of time, as to whether or not you heard anything that was said whereby he was purported to be

connected with the Golden Gate Bridge construction?

A. No.

MR. HILE: I have no further questions, subject to this exhibit, your Honor.

THE COURT: Any objection, Mr. Simon? [17]
MR. SIMON: Yes, your Honor. I object to it upon the ground that it is incompetent and hearsay and it is irrelevant and not material to any issue in this case.

THE COURT: What is the purpose of the offer?

MR. HILE: The purpose of the offer is to show by the official report of the District, through Mr. Strauss, who the persons were who were connected with the bridge, as shown by the official report.

THE COURT: In that the defendant's name

MR. HILE: Does not appear.

THE COURT: The objection will be overruled and exception allowed.

The final report by Mr. Strauss admitted in evidence and marked plaintiff's exhibit 95 (1265-1266.)

6. That the District Court erred and abused its discretion in unduly and improperly restricting the cross-examination of the witness, John S. Swenson, called on behalf of the Government, in that the Court arbitrarily refused to allow the cross-examination of said witness to establish the animus and bias of

the witness, Swenson. The following proceedings took place:

Q. Mr. Swenson, when the Grand Jury was in session over here in Tacoma in the fall of 1937, and it was rumored that they were considering an indictment in this case——

MR. HILE: I object upon the ground that the question shows the proceedings of the Grand Jury and there is nothing that would warrant—

THE COURT: Let counsel finish his question.

Q. (By MR. SIMON): Isn't it true that there were literally hundreds of people who came to this building and [18] asked permission to appear before the Grand Jury and isn't it true that you told them that you assumed the responsibility of telling them that they couldn't go before the Grand Jury to testify in opposition to the issuance of an indictment in this case?

MR. HILE: I object to the question upon the ground that what the Grand Jury does is entirely up to the Grand Jury. It has no bearing on this case. We are trying the cause on the evidence here.

THE COURT: Objection sustained.

MR. SIMON: Exception.

Q. Mr. Swenson, is it true that you were in the District Court of the United States for the Western District of Washington, Southern Division, Seattle, before the Honorable Lloyd Black on the 26th day of November, 1941, in the proceedings in this cause when the defendant, William Markowitz made application for a stay of execution for sixty days, and when there was presented to the District Judge, Black, a com-

munication from the Attorney-General of the United States recommending that——

MR. HILE: Just a moment, you Honor. I don't see where this has any bearing on the case at all, what happened in proceedings as against these other defendants in 1941 in connection with this case, unless counsel assures us it is something in reference to the defendant here.

MR. SIMON: I would like to complete the question. I will complete it in the absence of the jury if the Court has any notion that I am saying something that is improper.

MR. HILE: I ask that the jury be excused so that we can go into this matter.

THE COURT: The Court does not want to take the time to send the jury out time after time. Do you expect to follow that up with other matter. [19]

MR. SIMON: No, this is going to be my last question of the witness, I think, as far as I now know, and I think it is proper as indicating his attitude.

MR. HILE: I think this should be out of the the presence of the jury, because I was there also and I know what occurred.

MR. SIMON: I have got a stenographic transcript of what occurred and I think it is relevant.

THE COURT: The jury may step out into the hallway for a few minutes.

(Whereupon the jury was excused and the following argument was had out of their presence and hearing.)

MR. SIMON: I offer to show by the testimony of this witness and I believe that he will answer if allowed to have the question put to him, that on the 26th day of November, 1941, when there was pending in this cause an application of the defendant William Markowitz for a stay of execution for a period of sixty days to allow the Attorney-General, through the office of the Pardon Attorney, to make an investigation of the defendant's claim of innocence, lest there be a possible miscarriage of justice, because the defendant had never produced a defense witness upon the prior trial; that when the United States Attorney, pursuant to directions of the Attorney-General of the United States, told the District Judge that it was the recommendation of the Department of Justice that such stay of execution be granted, this witness urged that the Court not grant the request for a stay of execution.

MR. HILE: Now, what possible bearing has that on this case against this defendant?

What happened was we were instructed by the Attorney-General to make such a recommendation. We told the Court [20] that upon instructions of the Attorney-General we were making such and that is all there was to it. What has that got to do with the guilt or innocence of this defendant, Mr. Meyers? Not one iota.

THE COURT: Unless it goes to the animus of the witness.

MR. SIMON: That is exactly our point.

MR. HILE: Well, we were all of the same view, that the Court shouldn't do anything and the Court didn't.

MR. SIMON: The point is that this man violated—at any rate went contrary to the instruc-

tions of the Department of Justice of the United States.

MR. HILE: He wasn't working for the Department of Justice. He was not in that capacity at all. He was then a postal inspector and was not connected with the Department of Justice.

MR. SIMON: A different uniform now.

MR. HILE: Because an Assistant Attorney-General or somebody else writes a letter to us telling us to make such a recommendation, has no bearing upon Mr. Swenson, who was working for the Postal Department, and was not under the direction of the Attorney-General. The stay of execution was opposed not only by him but by all of us.

MR. SIMON: Now, that is not true. You know that your chief stated in view of the direction of the Attorney-General he was required to remain silent.

MR. HILE: That is right. But what is the implication? We were opposed to it and that is the fact.

MR. SIMON: The implication is that you refused to carry out the order of the Attorney-General of the United States.

MR. HILE: No, not at all. The implication was we were giving it to the Court, and that is what we did.

THE COURT: I think, Mr. Simon, I will have to sustain the objection to this line of inquiry.
[21]

THE COURT: You may make your offer if you want to further complete your record.

MR. SIMON: Your Honor, I offer to show that at the time when, by direction of the Assistant Attorney-General of the United States in charge of criminal prosecution, Mr. Wendell F. Berge, the United States Attorney's Office in this District, was directed, in the event that Mr. Markowitz should make application for a stay of execution, to recommend to the Court that the stay be granted to the end that the Pardon Attorney would make a complete investigation with reference to the claim of innocence of the defendant, Markowitz, lest there be a miscarriage of justice.

And I offer to show further, your Honor, that upon that occasion the Court stated as follows: "I am assuming that from what was said by Mr. Swenson in Tacoma that it is his intention to oppose probation. Is that still his position?"

I will show that he had opposed a similar thirty-day stay—this was a request for a continuance of sixty days—both of which had been recommended by the Attorney-General.

"Mr. Swenson: Yes, your Honor, it seems to me that there has been an unusually long delay in this case up to this time. The case started in the early part of 1934—that is the scheme started in the early part of 1934. My investigation started in the early part of 1936, and the indictment on which the trial was had was not returned until September 2, 1938. The sentences were imposed on August 29, 1939 and it took the Court of Appeals a long time to hand down that descision, and since that time the matter has been before the Supreme Court, and the Supreme Court decided it was not a cause that they were warranted in interfering with. I thing there has been a much longer delay than is usual or [22] warranted."

“THE COURT: I am assuming, speaking for yourself alone, you feel that the request contained in the telegram of the Assistant Attorney-General for a sixty-day further stay, in the event probation is denied, should not be followed by the Court?”

“MR. SWENSON: My recommendation would be that the sentence be made effective as soon as practical.”

THE COURT: Do you object to that offer?

MR. HILE: I do object, your Honor.

THE COURT: The objection will be sustained and exception allowed:

MR. SIMON: And the point to which that is directed, your Honor, is that the matter of the selection of witnesses and the matter of producing or withholding evidence has throughout this case been in the almost exclusive control of this man who has by this course of conduct indicated his animus and bias.

MR. HILE: That statement is absolutely denied. It has been within my discretion that witnesses would be called and what would not be called.

THE COURT: The Court is familiar with proceedings before a Grand Jury and will take judicial notice of the fact that the Grand Jury is an arm of the court. The Attorney attending upon them, the United States Attorney, the Assistant Attorney or whoever is representing him, or if it is the Postal Inspector, if the postal laws are involved, to present the facts such as they find them, and to follow the instructions of the foreman of the Grand Jury, members of the Grand Jury of the United States Attorney. And

I cannot indulge any presumption that any of the parties, including the Postoffice Inspector, did anything more than their duty in this case. [23]

Bring in the jury.

MR. SIMON: Exception.

THE COURT: Yes.

7. That the District Court erred in admitting the evidence, over objection of defendant-appellant. That the same was incompetent, Government's Exhibit 23, being a letter purportedly signed by the witness, Hurwitz for Luther Weden and purports to rescind a resolution previously passed by the Northwestern Gas & Oil Association, and the following proceedings took place:

Q. '30 or '31. Now, referring to the resolution which appears on this exhibit of the Northwest Gas & Oil Association, I will ask you whether or not that resolution was ever rescinded, if you know?

MR. SIMON: I object to that as not proper redirect examination.

THE COURT: Overruled. Exception allowed.

MR. SIMON: Exception.

A. Yes, sir.

Q. (By MR. HILE): And when, if you recall?

A. I believe in November, 1935.

Q. Handing you what is marked as plaintiff's exhibit 23, I will ask you if you recognize that as being a photostatic copy of anything that you know of?

A. Yes, sir.

Q. And what?

A. It is a photostatic copy of a letter that was sent.

THE COURT: Just a little louder.

MR. HILE: Yes, please.

A. It is a photostatic copy of a letter sent to the Peoples Gas & Oil Company, Peoples Gas & Oil Development Company, rescinding the resolution. [24]

Q. And who signed that letter, if you know?

A. I signed that with the name of Luther Weden, who was chairman of the committee.

Q. And how did you happen to sign it as his name?

A. Because he couldn't wait, and with his permission I signed it.

Q. I didn't hear your last statement.

A. With his permission, I signed it.

Q. He authorized you to sign it?

A. Yes, sir.

MR. HILE: I offer this in evidence, your Honor.

MR. SIMON: We object to it as incompetent.

MR. HILE: I might state that the original of that is in the Court's custody, and I could substitute the original if it is necessary.

THE COURT: I don't understand the objection is based on the fact that it is not the original.

MR. HILE: I don't understand that he did.

MR. SIMON: Not at all. I am not raising that question your Honor.

Q. (By the Court): When did you say that the resolution was rescinded?

A. I believe it was in November, 1935, or 1936.

THE COURT: This letter bears date March 17, 1936.

A. Then it was March. I don't remember.

THE COURT: 1936

A. Six or seven years ago.

MR. SIMON: I call your Honor's attention to the fact that admittedly, according to counsel's opening statement, the lease sales had terminated at the time this letter was written.

MR. HILE: Is that dated March, your Honor?
[25]

MR. SIMON: Yes, March, 1936.

MR. HILE: April 15 is the date the sales stopped.

THE COURT: It will be admitted in evidence. Exception allowed.

Photostatic copy of the letter admitted in evidence and marked Plaintiff's Exhibit 23.

Said Exhibit 23 reads as follows:

Northwest Oil and Gas Association
312-313 McDowall Building
Seattle, Washington
Phone Eliot 8363

March 17, 1936

No. 15187

PLAINTIF EXHIBIT 23

ADM Oct - 8 1942

Peoples Gas and Oil Development Co.
Peoples Gas and Oil Co.
Seattle, Wash.:

Gentlemen:

You are herewith notified that the Executive Committee of this Association has been instructed to withdraw its resolution of March 19, 1934 offering cooperation to the Peoples Gas and Oil Development Co.

At the time this resolution was adopted our committee was given to understand and pledges were made thereto that your companies had a legitimate program looking to the development of the petroleum resources of this state. It has become obvious, through the repeated misrepresentations made by your agents, and by the malicious practices of your officials, that your conduct here is not in accord with the ethics of honest administration required by this association, nor with the spirit of cooperation in which it is organized. [26]

Your immediate return of the letter conveying the resolution is requested, and you are hereby formally notified that its use in any sales literature or campaign is forbidden, and that proper steps will be taken to enforce these instructions, should you not willingly accede.

Yours very truly,

NORTHWEST OIL AND GAS
ASSOCIATION
LUTHER WEEDIN
Luther Weedin, Chairman
Executive Committee.

LW ET [27]

8. That the District Court erred in rejecting Defendant's Exhibit A-122 for identification, said letter being dated June 23, 1934, and signed by Ward B. Blodgett, and addressed to W. A. Broome.

Q. (By MR. SIMON): Calling your attention, Mr. Blodgett, to Exhibit A-122 and A-123, I will ask you whether A-122 is the letter you wrote on or about the date it bears, to Mr. Broome and whether A-123 is the answer that you received to it?

THE COURT: What is your answer, Mr. Blodgett?

A. Yes, I remember those letters.

* * * * *

A. Yes, that is the letter.

MR. SIMON: I offer this exhibit in evidence.

MR. HILE: I object to 122 and 123 because it doesn't bear, in my opinion, at all upon the Advisory capacity, which we have mentioned.

THE COURT: Pass them up.

Q. (By MR. SIMON): Mr. Blodgett, calling your attention to Defendant's A-125 for identification, I will ask you whether that is a reply that you wrote, at the request of whoever——

A. (Interrupting): Broome.

Q. ——of Mr. Broome, after an examination of this file?

A. Yes, it is.

MR. SIMON: I offer A-125 in evidence.

MR. HILE: With respect to 124, I have no objection.

THE COURT: It will be admitted in evidence.

Letter from Broome admitted in evidence and marked Defendant's A-124.

MR. HILE: With respect to A-125, I have not had an [28] opportunity to read it yet.

Q. (By MR. SIMON): Mr. Blodgett, with reference to A-125, I will ask you if that was rendered after you requested your name be removed from the advertising matter.

A. Yes, it was.

MR. HILE: I object to it on the ground that it is not within the scope of the Direct Examination.

THE COURT: I didn't hear any questions about that.

MR. HILE: A-125 has been identified by the

witness as the reply he wrote to Mr. Broome. I asked him whether it had been written before or after he advised them to quit using his name and he said after. So, thereupon I assume it is not within the scope of our examination. This is opening the field. I have no objection to this witness either being called now as a witness for the defense upon this other aspect, or holding him here, but our case has developed sufficient as to the geology, I think, and I think they should make him their witness, if they wish to pursue the matter or replies to inquiries from a geological aspect.

MR. SIMON: I think that bears on the proposition that he was a member of the——

THE COURT: 122 and 123, Mr. Simon, do not bear upon that. They might be competent in defense but they would not bear upon the issue of whether he authorized his name to be used or not to be used. The objection is sustained as to that.

Letters previously marked for identification A-122 and A-123 were rejected.

Said Exhibit A-122 for identification, reads as follows: [29]

WARD H. BLODGET
342 Petroleum Securities Bldg.
714 West Tenth Street
Los Angeles, California

June 23, 1934

No. 15187

DEFENDANT EXHIBIT A 122

Not Adm.

Mr. W. A. Broome, President,
People Gas & Oil Development Company,
Suite 410, Fourth & Pike Bldg.,
Seattle, Washington

My dear Mr. Broome:

An old friend of mine, who is in the oil business, and has spent some time in Seattle recently, called me on the phone the other day and told me, in a sort of facetious way, that he was surprised to find that I was aiding in a program to put the State of Washington in the business of distributing gasoline. When I pleaded ignorance as to what he was talking about, he told me that he had seen my name used in connection with publicity about an oil and gas prospecting venture in Washington and that the promoters seemed to be very definitely linked up with the sponsors of an initiative petition to permit the State to distribute gasoline. He said that he had seen newspaper clippings quoting you as saying that the major oil companies were gouging the public on price and that statements over the radio lead him to conclude that I was part and parcel with the group endeavoring to put over the initiative.

I am wondering now if this friend of mine knows what he is talking about. I cannot, for my part, see [30] that the success of this initiative would be of any aid to your planned operations in Washington as a matter of fact, I should think that it would be harmful in the long run. I understand here that all of the independent companies of California distributing gasoline in Washington are against the bill, and I can't help but feel that it will do us no good as a potential producing oil company to foster the measure.

It probably is true that the price of gasoline

is too high in the northwest, but I should think that if the State goes into the business on its own hook it would create a situation still worse and would not help us if you succeed in developing oil.

Of course I am so far away that I do not know all of the angles which you have to face, but I hope you do not go too strong in your propaganda against the major oil companies. I can feel the reactions against myself clear down here because my name has been mentioned in connection with your company and of course you know my business is nearly all with the large oil companies.

Let me know the true situation so that I can combat any adverse criticism down here.

Has the company of which Roberts and you and I participate been organized?

With best wishes for successful development I remain

Very truly yours,

WARD B. BLODGET

WBB:DD [31]

9. The District Court erred in rejecting Defendant's Exhibit A-123 for identification, being letter dated June 26, 1934, written by W. A. Broome to Ward B. Blodget, being in answer to Defendant's Exhibit A-122 for identification, which letter reads as follows:

“June 26, 1934

Mr. Ward B. Blodget Esq.
342 Petroleum Securities Bldg.
714 West 10th Street
Los Angeles, California

My dear Mr. Blodget:

I was glad to receive your letter of June 23 and hasten to let you know the true situation.

Neither my company or myself have ever been linked up in any way with the initiative petition, the sponsors of which seek to permit the state to distribute gasoline. My personal attitude is precisely the same as yours in the matter, in that I fail to see how it would benefit either major or independent oil companies. I have always adopted an attitude diametrically opposed to either participation in or interference with private enterprise by either state or federal officials. I believe there is altogether too much damnable paternalism on the part of petty politicians now — without adding to the situation.

The price of gasoline is undoubtedly very high throughout this area, but it seems to me that the only thing that will tend to cure that situation is the establishment of commercial production within the confines of the state.

Regardless of any quotations charged to me, I would welcome the presence of Mr. Kingsbury himself at any of the meetings or public gatherings which I have addressed up here. I have never criticized the major companies, on the contrary, [32] I complimented them very highly on the very business-like manner in which they have protected their marketing interests here. I can see no necessity for hammering the major

companies in order to build interest in our project, as the interest is extremely keen now.

I hope that the foregoing will tend to clarify the situation for you as I should deeply regret any action of mine that might, even inadvertently, cause loyal friends like yourself any embarrassment or put you in a position where an explanation was required.

Answering your last question, the status of the participation in my interest is not yet settled, but I believe it will not take long to clear it up after Dr. Meyers returns here—which I anticipate will be in the next few weeks.

I have not as yet acknowledged the receipt of the last letter you sent me in answer to my inquiry as to geological services. I have the situation in mind, however, and thank you most sincerely for the suggestions.

With kindest regards, old friend, and best of good wishes,

Yours very sincerely,

PEOPLES GAS AND OIL DEVELOPMENT CO.

William A. Broome

President

WAB:LFN"

The offer and testimony in connection therewith have been set forth under assignment No. 8.

10. The District Court erred in rejecting Defendant's Exhibit A-131 for identification, which is a

carbon copy of [33] the letter, dated June 1, 1934, addressed to the witness, Dwight C. Roberts, written by W. A. Broome, said letter reading as follows:

“June 1st, 1934

Mr. Dwight C. Roberts
2000 West 12th Street
Los Angeles, California.

My dear Pop:

I wrote you under date of April 25th, but up to now have received no word from you, consequently I am compelled to believe that you failed to receive my letter. For that reason, I am enclosing copy of it. Otherwise, this letter might not make sense.

Things are moving along very nicely and under the most favorable of auspices and everything is being run as clean as a “hounds tooth.”

We are going over specifications at this time for the putting in of a heavy duty standard rigging. I wish you would let me know immediately if you know of a first class cable equipment that can be obtained in California. I have one outfit in mind in Wyoming which we might be able to use, but in California where cable is not being used much any more. I would appreciate a response from you on this.

I am expecting and hoping to be able to turn you loose on some real work up here very shortly, providing your other duties do not render your services unavailable, and wish you would let me know how things are shaping up for you so that I shall know what to do. I also wish you would let me know what those services are going to cost me over periods reaching from one month up.

I had the pleasure of a visit from your friend Mr. Curtiss, Geologist, on Monday of this week. He brought a friend of his with him and visited for some considerable [34] time. He is on his way to Alaska. We had quite an interesting talk together in which he told me of the circumstances on which he parted from you some two weeks previously. I wish I had been with you but I am glad to know that you are still as capable as ever along those particular lines.

Mr. Sheldon Glover, State Geologist in charge of Non-Metallic Minerals Division for the newly created State Natural Resources Conservation Board here, visited the well with me about ten days ago. We are having splendid cooperation from him and his chief, Dr. Culver. We are running 12½" casing in the hole and the prospects look tremendously interesting.

I had a fine letter from Kim Hollins a few days ago and I am asking him to please let me hear from him at his earliest convenience.

Hoping to have the pleasure and privilege of seeing you up here very soon, please believe me to be as ever,

Your sincere friend,

WILLIAM A. BROOME

WAB:FB"

Q. (By MR. SIMON): Mr. Roberts, you have examined Defendant's Exhibit for identification No. A-131?

A. Well, I think so. I don't remember the number. Is that the letter I just looked at?

Q. Yes.

A. Let me look at it again so as to be sure.

Q. Do you recognize that as a carbon copy of a letter you received on or about the date it bears, from Mr. Broome?

A. Yes.

MR. SIMON: I will offer that in evidence.

MR. HILE: I would like to ask the witness a question.

THE COURT: Very well. [35]

Q. (By MR. HILE): Is that Exhibit A-131 to which you have just looked received in connection with or have any bearing on your acting as a member of the geological committee?

A. It has a bearing on my objection to being placed on an advisory committee, which I did not know about until about this time, almost three years after this first letter that has been spoken of.

MR. HILE: I am wondering if you do not misapprehend the instrument. I wish you would look at it again, please.

A. This is the one of the year before, isn't it? I remember this letter, yes.

Q. Does that have any connection with your acting or being requested to act on any geological advisory committee?

A. No.

MR. HILE: I object then on the ground that it does not have any bearing by its contents, as far as I can see or ascertain.

MR. SIMON: Calling the Court's attention to the fourth paragraph of the letter.

THE COURT: I still think, Mr. Simon, it is rather remote from the direct examination and goes pretty far afield in the field of cross examination. I sustain the objection and allow an objection.

MR. SIMON: May I inquire from the witness?

THE COURT: I thought you had.

MR. SIMON: Well, about the specific provisions of the letter, whether or not Mr. Broome did not discuss with him in this letter the matter of his employment in connection with the geological work of the drilling of Donnie Boy well and whether that is not—

MR. HILE: Even so—

MR. SIMON: That is what I thought. [36]

MR. HILE: I thought the Court had ruled upon it.

THE COURT: You may ask him that question. Proceed and ask him that question.

MR. HILE: What was the question?

MR. SIMON: I am asking the witness whether the fourth paragraph of this letter did not refer to the contemplated employment at that time, June, 1934, of this witness in connection with the performing of engineering services of this witness on the drilling of Donnie Boy?

A. Well, he merely asked me, "I wish you would let me know how things are shaping up for you so that I shall know what to do. I also

wish you would let me know what those services are going to cost me over a period reaching from one month up." I don't recall that I ever answered this letter. But there is nothing in here about the agreement. He is talking about remuneratoin here, aside from the agreement.

Q. (By MR. SIMON): What I am trying to inquire from you, Mr. Roberts, whether that letter did not inquire about employing you on this job, in connection with this job of drilling Donnie Boy in June, 1934 and whether or not that fourth paragraph of the letter does not refer to that.

MR. HILE: I object to that.

THE WITNESS: It doesn't say anything about Donnie Boy here.

MR. HILE: It doesn't say anything about an advisory geological committee.

THE COURT: I think I shall sustain the objection to any further questions on that. The specific issue is framed by the indictment here, that the Peoples Gas & Oil Development Company had in its service a highly qualified advisory board composed of prominent petroleum geologists and engineers, and that such board was composed of the following: Dwight C. [37] Roberts, George H. Stone and George C. Blodget, whereas in truth and in fact, said defendant well knew at said time they did not. Now, that is the issue.

MR. SIMON: That is right.

THE COURT: Anything that throws light upon the issue, the Government has seen fit to place this witness upon the stand and ask him, since he is one of the main persons in the indictment, if he was on the advisory board. He

has answered in the negative. Now, anything that will tend to refute that is competent; but beyond that as to the relationship that might have existed in times past, unless they throw light on that issue, they are not proper as cross examination.

MR. SIMON: My position, if the Court please, is that these contracts under which Broome was entitled to his services, plus this letter which inquired about his assuming active duties in connection with the geographical work on this particular project, are competent on the proposition of whether or not the statement of these men in this perspectus that they had arranged for the services of——

THE COURT: The statement does not say that they have any arrangement. The statement recites a definite fact, not something in the future.

MR. SIMON: It is not prospective.

THE COURT: I don't think we will get anywhere by further discussion of it.

MR. SIMON: Exception, your Honor.

Document previously marked for identification, Defendant's A-131 Rejected. [38]

14. The District Court erred in refusing to grant the defendant-appellant's motion for a new trial.

Respectfully Submitted,

BERTIL E. JOHNSON,

Attorney for H. Harry Meyers, Defendant-Appellant herein, 1205 Rust Building, Tacoma, Washington.



No. 10325

IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

H. HARRY MEYERS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

HONORABLE CHARLES H. LEAVY, *Judge*

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FILED

AUG - 7 1944

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1017 UNITED STATES COURT HOUSE
SEATTLE 4, WASHINGTON



No. 10325

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HONORABLE CHARLES H. LEAVY, *Judge*

BRIEF OF APPELLEE

STATEMENT OF THE CASE

In this case Appellant H. Harry Meyers is appealing from his conviction on retrial, as to him alone, of the case involving *Joshua F. Simons, et al v. United States*, affirmed as to three co-defendants by this Court on April 21, 1941, 119 Fed. (2d) 539. The jury in the first trial disagreed as to defendant Meyers while convicting four others and a fifth having pleaded nolo contendere (Tr. 70).

Appellant's brief states the jurisdiction of the Court and gives a fairly accurate abstract of the thirteen count indictment, which names nine defendants. The first ten counts charge defendants used the mails to further fraud in a scheme involving oil-lease sales promotion in the State of Washington in violation of Sec. 338, Title 18, U. S. Code; Counts XI and XII charge violations of Sec. 17 (a) (1) of the Securities Act of 1933, Title 15, U.S.C.A., Sec. 78q, as amended, in the operation of such scheme; and the thirteenth count charges conspiracy to commit violations of such statutes.

The scheme devised and placed in operation by the defendants is described in detail in the first count of the Indictment (Tr. 3).

The retrial of defendant Meyers started on October 5, 1942, before a jury, the Honorable Charles H. Leavy, District Judge, at Tacoma, Washington, presiding (Tr. 71). On November 12, 1942, the jury found Meyers guilty on the first ten counts and not guilty on the last three (Tr. 71). On November 21, 1942, the defendant's motion for a new trial (Tr. 72) was overruled (Tr. 80) by the Court after argument, and sentence was imposed upon appellant to which he duly excepted (Tr. 80).

SUMMARY OF THE EVIDENCE

Appellant's statement of the evidence is sketchy and incomplete. His brief does not argue the claim of insufficiency of the evidence to support the verdict included in his assignment of errors (Tr. 142-3). Nevertheless, we deem it essential to briefly summarize the more important phases of the evidence to show the overwhelming character of the proof so the Court may judge from the whole record whether any claimed errors were prejudicial to the extent of denying substantial rights to appellant or were simply technical errors in rulings on admissibility.

Prior to 1934 defendant Broome had acquired the assignment of approximately 135,000 acres of oil and gas leases in an area located in Eastern Washington known as Frenchman Hills. Broome paid no money or other valuable consideration therefor except to obligate himself to drill for oil or gas, and the assignor reserved a royalty interest in the event of production (Tr. 210-12; G. Ex. 58). Broome interested appellant Meyers who brought into the enterprise his intimate friends, the defendants William Markowitz and J. F. Simons (Tr. 196-9, 883, 1329).

A tentative agreement for the exploitation and sale to the public of interest in these leases was signed

by Meyers and others of the defendants (G. Ex. 8; Tr. 187-93) about March 16, 1934, according to Meyers (Tr. 1329). It outlines the plan of operation in selling the leases in fractional units to the public. The plan was modified as to some of its details, but in substance was followed by the defendants.

This exhibit is of unusual interest. First, because it is rare indeed that documentary evidence of the basis of a conspiracy is obtained; and, second, because it shows that the real purpose of the enterprise was not to attempt to develop oil, but to create a sales market, the drilling serving only as a sales promotion auxiliary.

The agreement provides in substance for the formation of three privately owned stock companies, No. 1 being designated as the Holding Company, which was to hold the leases; No. 2, being designated as the Oil Company, which was to sell the leases to the public; and No. 3 being designated as the Development Company, which was to do the drilling.

The text of this agreement shows that the drilling was to be financed from the proceeds of the sales to the public. With reference to the Holding Company, the exhibit states:

"The main purpose of No. 1 will be to procure as much publicity as possible, together with material of every nature that might further the civic

interest, as well as supply the selling organization with ammunition." (Tr. 189).

Relative to No. 2, the Oil Company, the agreement recites:

"In order to obtain the best results, No. 2 should work in close harmony with No. 1, and with No. 3, particularly so as to gage its activities in keeping with the progress of the development of No. 3." (Tr. 190).

As to No. 3, the Development Company, which was to do the drilling, the agreement states:

"The operations of this company is a very essential part of our program, as they will have to constantly keep a development program going consistent with the Sales Department. Their purpose is to create as much public interest as possible, and should work very closely with the management of No. 2 for obvious reasons." (Tr. 193).

Shortly after the signing of this tentative agreement, and prior to March 19, 1934, the appellant Meyers, together with William Markowitz and J. F. Simons, came to Seattle to enlist local support for the project. They arranged for the support of the Northwest Oil and Gas Association which was composed of an active group of local citizens attempting to find oil in Washington.

A meeting was held by the three with the Directors of the Association at which Meyers was spokesman. He stated that he was connected with the en-

gineering firm of Strauss and Meyers who were building the Golden Gate Bridge at San Francisco. There was no such firm (Tr. 682). He introduced Simons and Markowitz, whom he sponsored as his financial agents who would handle the promotion end of his program. He said that they proposed to drill a number of wells in the state, and would help any worthy project that might be under way. Meyers also personally told two of its members that if they undertook the drilling in Washington, it would be completed even if he personally had to do it (Tr. 223-6).

As a result of these representations the Directors of the Association passed a resolution dated March 19, 1934, endorsing the enterprise. This resolution was later widely used in advertising matter and series of "Broad sides" (beginning with G. Ex. 21) in connection with the sales campaign. The endorsement was used during the selling campaign, but was rescinded by letter of March 17, 1936 (Tr. 222).

The financing through loans mentioned in G. Ex. 8 (Tr. 189) as being necessary in the conduct of the deal until it should be self-supporting through sales was obtained from appellant Meyers and defendant Louis Roth. On March 26, 1934 at Los Angeles, Meyers drew two checks for \$5,000 each payable to the Atkins Corporation, and delivered them to Mar-

kowitz and Simons, who controlled the corporation (Tr. 1013, 1015, 1018). On the same date Louis Roth purchased a cashier's check for \$10,000 payable to himself, and endorsed it over to the same corporation (Tr. 992-3). These checks were deposited on the same day to the credit of the Atkins Corporation in Los Angeles, and later were withdrawn and deposited in another Los Angeles bank by the Atkins Corporation (T. 1012-13; 1042-44).

On March 27, 1934, Meyers, other defendants and accomplices at Los Angeles, organized three Washington corporations through which to promote the sales to the public. These corporations were:

No. 1—Peoples Gas & Oil Corporation, for the purpose of holding the leases.

No. 2—Peoples Gas & Oil Company, the sales organization to sell lease units to the public.

No. 3—Peoples Gas & Oil Development Company, to carry on a drilling program.

Articles of incorporation for each were filed in Olympia, Washington, April 4, 1934 (G. Exs. 1-4, 11-13). For convenience these three companies will be respectively referred to as the "Corporation," the "Oil Company" and the "Development Company".

Each of the three companies as originally organized had a capital stock of 640 shares of \$1.00 par

value. The stock in each of these companies was issued in April, 1934, as follows: (Tr. 216)

Atkins Corporation (J. F. Simons and William Markowitz)	224 shares
H. Harry Meyers	112 shares
Louis Roth	56 shares
B. Blank	56 shares
William A. Broome	160 shares
M. M. Black	32 shares
TOTAL	<u>640 shares</u>

On or about April 11, 1934, Broome assigned to the Corporation the leases which he had held (G. Ex. 9; Tr. 194). A sales agreement was executed between the Corporation and the Oil Company providing for the sale by the latter of lease units to the public on the basis of 40% of the proceeds to the Corporation and 60% to the Oil Company. The Oil Company was to devote up to 62½% of its 60% for development expenses (Tr. 217). The agreement originally appeared in the minute books, but was removed with other alterations of the records about a year later in April or May, 1935 (Tr. 216-17, 984) when the representation started that Meyers personally was paying all the drilling expenses.

Shortly after the companies were organized the offices were set up in Seattle, Washington. The origi-

nal \$20,000 advance by Roth and Meyers was reflected on the records of the Oil Company in Seattle, and checks were drawn against it for organization expenses, and all other expenses of all three companies until that fund was finally exhausted by June 25, 1934 (Tr. 942-3, 952, 1044).

The defendant J. F. Simons instructed the bookkeeper that four notes should be set up on the books of the Oil Company for the \$20,000, that is, the books were to reflect that it owed H. H. Meyers, B. Blank, Louis Roth and the Atkins Corporation each \$5,000 (Tr. 944-5).

Before the \$20,000 was exhausted the Oil Company opened an account with the Peoples Bank & Trust Company in Seattle. To that account was transferred the remaining portion of the \$20,000 that had been deposited in the name of the Atkins Corporation of Los Angeles, and in the Seattle account was also deposited money that began to come in from the proceeds of the sales of the leases. The account was later transferred to the Seaboard Branch of the Seattle First National Bank (G. Ex. 263).

At Seattle the offices of the three companies were in the same suite. Meyers and other principal defendants officed in this suite. All office employees who

worked for all three companies were hired by the defendant J. F. Simons, who also dictated the minutes of all three companies (Tr. 199-200, 203, 213, 983). The books and records of all three companies were kept under supervision of defendants J. F. Simons and William Markowitz, although the latter did not actively participate until 1935 (Tr. 935-6).

The Corporation at no time had a bank account, all of its expenses being paid by the Oil Company (Tr. 941, 952). During April, 1934 to July, 1935, the Development Company had no bank account (Tr. 941), and all of its expenses were paid by checks drawn by defendant J. F. Simons first on the Atkins Corporation account at Los Angeles mentioned, and later on the account of the Oil Company at Seattle (Tr. 986).

After July, 1935, although a bank account was opened and maintained by the Development Company, J. F. Simons and William Markowitz continued to examine expenditures made by the Development Company, and all checks issued by it were ordered submitted to them before being issued to payees (Tr. 952). So, too, the drilling equipment for the Development Company was purchased under the close personal supervision of the defendant J. F. Simons during the fore part of 1934 (Tr. 447-449).

Even at this early stage of the proceedings, that is, in April, 1934, appellant Meyers detailed his importance and his intimacy with J. F. Simons and William Markowitz saying, too, that he was president of the Strauss Engineering Company, that he was building the San Francisco Golden Gate bridge, that he considered himself worth well over \$15,000,000 (Tr. 195-9).

Immediately upon opening the offices in April, 1934, the sales campaign was started. The promoters brought from Los Angeles to Seattle a group of high-powered salesmen called "prima donnas", and another class of agents called "bird dogs", circulated through the city looking for prospects whom they in turn referred to salesmen who contacted the prospects by telephone. The more interested ones were later contacted by the "prima donnas" (Tr. 200-1, 206).

This high-pressure selling campaign was not very successful, and was abandoned after a few weeks, and the telephone room was closed. The high-powered salesmen in the main returned to California (Tr. 201). The selling plan was changed, and the project was advertised as a civic enterprise employing local salesmen (Tr. 285-286).

A great number of the local salesmen were em-

ployed from all classes of people who were first sold on the project themselves, bought leases and were thereafter induced to sell to others on a 20% commission. All local salesmen who testified at the trial purchased leases for themselves or their families (Tr. 258, 330, 337, 348, 363, 367).

The Seattle office remained the headquarters, but soon branch offices were established at Tacoma, Spokane, Yakima, Aberdeen and other towns in Washington (Tr. 243), as contemplated in the tentative agreement (Tr. 190).

Sales publicity was carried on primarily by sales meetings which all salesmen were required to attend, where they were trained and instructed; by public meetings, widely announced and advertised, which salesmen were required to attend, and to which the public was invited and urged to attend; and by printed advertising matter distributed both to the public and to the salesmen, and the sales material furnished salesmen for their kits.

Sales meetings were held three times a week at first, and later daily in Seattle and the larger branch offices, and salesmen were required to attend at least four times a week (Tr. 243, 348). William Markowitz as general manager, J. F. Simons and others,

including Broome and Meyers, would speak at these meetings (Tr. 243, 300, 309).

Public meetings were held once a week in Seattle, Tacoma, Spokane, Yakima, Aberdeen, Vancouver, Olympia and Walla Walla (Tr. 243). They were addressed regularly by defendant Broome with the assistance of various other members of the organization, and occasionally by J. F. Simons and Meyers (Tr. 243, 310). Meyers was also present at other public meetings where he did not speak (Tr. 517-8, 521).

Advertising matter furnished branch managers and salesmen included the "Broadsides" (G. Exs. 21, 26-31), which the branch managers were told to make their "Bible" of instructions to their salesmen, the salesmen in turn being instructed to use it as sales material (Tr. 245-6).

With reference to the broadsides, a conversation between Meyers and witness Duncan in San Francisco in 1934 is illuminating. Mr. Duncan testified as follows:

"He (Meyers) laid a broadside similar to this out on the table and asked me what I thought of it. And I ran through it and read the various things in it, looked it over casually, and I said, 'Well, it looks like 'blue sky' to me,' and I said 'Aren't you afraid of the Better Business Bureau?' And he said, 'well it was perfectly within

the law.' I said, 'Do you really expect to find oil there?' He said, 'You never know what you will find.' I said, 'Well, suppose you don't find oil?' in the first place, — He said, however, they were not particularly interested in finding oil; what they were interested in was selling shares. And I said, 'Suppose you don't strike oil?' 'Well', he said, 'we will just keep on boring.' That was the purport of the conversation * * *" (Tr. 877-8).

G. Ex. 33 is an example of a salesman's kit, containing a copy of the Broadside, letters of endorsement, "The Northwest Gas and Oil World", a reprint of an article written by Milton Hurwitz for the magazine "Commerce and Industry" (G. Ex. 22), newspaper stories currently furnished and large printed sheets of news clippings called clip sheets. J. F. Simons presented the clip sheet at a salesmen's meeting in June, 1935, telling the salesmen he had worked hard to obtain this publicity, and that it would be a great selling aid (Tr. 247-8). Salesmen were instructed to tell their story based on the printed matter and on the statements made to them by company officials either individually or at the meetings (Tr. 313).

After the arrangements between the promoters and the Northwest Oil and Gas Association terminated so that they could no longer have copies of this paper issued to purchasers of leases and prospects, the promoters started their own organ called the "People's

Progress", and circulated it among their investors and prospects. G. Ex. 35 is a complete volume of that publication, which is not reproduced in the transcript because of its bulk. It was used extensively as sales material (Tr. 250).

The keystone of the lease selling campaign was appellant Meyers. It was based on representations concerning his fine business record and standing in the industrial and financial world, upon his reputed great wealth, his philanthropic character, the fact that he was a great natural resource developer for the public benefit, that he was principally responsible for the building of the Golden Gate Bridge, his special interest in the State of Washington which had caused him to undertake this drilling development which he was to guarantee and pay for out of his own pocket in order to thwart the hostile opposition of the major oil companies, and his often repeated promise and pledge that he would continue the Frenchman Hills drilling operations out of his own ample funds until he had given the field a thorough and adequate test. (Tr. 240-1, 250-2, 285, 288, 291-3, 295, 310-1, 337, 339, 342, 344, 346, 349-51, 354-55, 359-61, 367-70, 372, 374-5, 381, 401, 462-3, 489, 491, 493-4, 498-9, 517-9, 521, 523-4, 534, 539, 1392).

Some of the major misrepresentations are as follows:

1. That Meyers was a man of great wealth, a millionaire or multi-millionaire, a great financier and a philanthropist (Tr. 196, 240, 258, 277, 281, 284, 287, 295, 355, 360, 367, 370, 372, 375, 381, 462, 489, 491, 524, 534, 1392).

Meyers was present when such statements were made (Tr. 239-40, 293, 300, 309, 368-70, 375, 381, 399, 462, 491, 496, 509, 518, 521, 524). Meyers also made similar representations personally, telling one witness he considered himself worth well over \$15,000,000 (Tr. 196-199, 207), and other witnesses that he was extremely wealthy (Tr. 281, 295).

Meyers was not a millionaire nor a wealthy man (G. Ex. 110-B). His 1932 income tax shows he did not submit any report for taxable income for the preceding year, and his returns for the years 1932-39, inclusive (G. Exs. 110-B to 110-I, inc.) show only meager income during those years except for what he obtained from Strauss, the builder of the Golden Gate Bridge. In 1920 when he was represented as having shortly before returned from Europe with a very large fortune he was unable to pay a note for \$6,000, and was obliged to ask for a number of

extensions (G. Exs. 104-6; Tr. 905-8). Meyers admitted on cross examination that during the period 1932 to 1939, covered by the income tax returns, he had no income except from Strauss (Tr. 1388).

The only evidence that he could refer to were two inconsistent statements he furnished government agents (Tr. 886-7). In Meyers own case he failed to present any evidence except his own word that he was a man of wealth. He also admitted to the agents that it was not true that he was a very rich man, and that his middle name was "Make A Dollar" (Tr. 882, 884, 1150, 1170).

Likewise he denied on the witness stand that he had ever told anyone he was a millionaire or multimillionaire, or that anything of the kind was ever said by him (Tr. 1338).

2. That he was the head of the company that was building the Golden Gate Bridge, and was primarily responsible for its being built (Tr. 197, 241-2, 281, 338, 349, 360, 365, 366, 372-5, 401, 462, 498, 882, 1149, 1392).

Meyers owned no stock and had no interest in the Strauss Engineering Company, nor any other company concerned in the building of the bridge, nor was he an officer or director in any company interested

in building the bridge (Tr. 682). He so admitted (Tr. 1324). The only connection Meyers had with the Golden Gate Bridge is that he was able to obtain contracts with Strauss, the chief engineer, on a percentage basis of the fee Strauss would receive as chief engineer (Tr. 574, 580-4).

Meyer's explanation of D. Exs. A-56, A-57, A-58, representing the contracts, was very unsatisfactory as to showing how he was entitled under the first two exhibits to the \$220,000 which was called for by the latter exhibit (Tr. 1354).

Meyers did practically nothing toward forwarding the bridge or Strauss' appointment as chief engineer (Tr. 551-60, 579, 587, 613-5, 621-80, 876; G. Ex. 98, Tr. 868). Meyers himself on cross-examination could not relate a single material thing he had done to further the Golden Gate Bridge project, although he was pressed closely and hard on the subject (Tr. 1344-53, 1356-1358).

Strauss is dead (Tr. 584). It is evidently true that late in 1928 and early in 1929 he had apprehensions about his chances of appointment as chief engineer. At that time Meyers found his opportunity of working his way into Strauss' confidence and cause him to believe Meyers could assure the appointment

(D. Ex. A-52, Tr. 574; D. Ex. A-57, Tr. 581; and G. Ex. 98, Tr. 866). Such anxiety on Strauss' part was unnecessary (Tr. 670-671, 676).

3. That the project was amply financed, Meyers was guaranteeing the money, and later that he was furnishing the money out of his own pocket, and that an adequate test would be given to the territory, more than one well would be drilled if required, and that they might have to drill eight or ten wells (Tr. 311, 344, 347, 369, 518, 525, 534, 539; G. Ex. 35, issue of Jan. 10, 1936, Pg. 3, Column 2; Tr. 242-3, 307, 346, 361, 368, 373, 489, 494, 521; G. Ex. 32, clippings of "Wenatchee Daily World," September 1 and 15, 1934; "Puyallup Valley Tribune," March 8, 1935; "Tacoma Times", May 3, 1935; "Seattle Post-Intelligencer", 1934; "Spokane Press", September 4, 1935; "Aberdeen Daily World", August 29, 1935; "Commerce and Industry", November, 1934).

Meyers admitted that representations to the public first were that he was backing the project (Tr. 1372). He further admitted that later on in the sales campaign it was represented that he was to personally pay for the drilling with his own funds without any prospect of recompense except in the event of oil (Tr. 1373-4, 1378).

Meyers appeared at both sales and public meetings himself making talks, and also heard the various representations made and made representations himself (Tr. 239-43, 248-50, 258, 274-5, 277, 279, 289-94, 300, 309-10, 337-9, 349-51, 359-61, 368-75, 381-2, 462-3, 510, 517-9, 521, 523-4, 533, 1374).

Meyers himself admitted that he did nothing to counteract the representations (Tr. 1374-5).

4. Subsidiary representations were that Meyers' hobby was the development of natural resources (Tr. 309-10); that he had a special interest in the State of Washington because of his wife who was from Tacoma (Tr. 240-1, 310, 344, 491); that William A. Broome was a geologist and petroleum engineer of great experience (Tr. 248-50, 277, 287, 290) and that Broome initially had shown Meyers good geological reports of the territory, but that Meyers had not relied only on them or on Broome, but had sent up his own geologist to make an investigation, and had received a favorable report (Tr. 198, 344, 350, 360, 368, 524).

As a matter of fact, Meyers admitted that he knew Broome was not a geologist (Tr. 1361). Meyers was also told of admissions by Broome that he was not a geologist or connected with any successful oil venture (Tr. 296-7). Meyers also admitted that he did not

have any geologist, and had sent none up (Tr. 1360-1).

Besides the representations as to Broome being a geologist and his experience, great reliance was placed in the sales campaign upon the advisory board of eminent geologists who were represented to be guiding the development (G. Ex. 21, 26). This advisory board was entirely fictitious, and the men purporting to compose it were not acting in an advisory capacity and had not consented to their names being used, and when they heard of their names being used, they immediately wrote requesting that their names be withdrawn (Tr. 526-7, 1123, 1131-2).

The defendants synchronized the representations by stating that the project was founded upon the basis of "Men, Money and Machinery." (Tr. 365). "Men" referred to Meyers, Broome, Markowitz and Simons (Tr. 291). The public was told of their prior achievements and standing which guaranteed the integrity of the program. With reference to "Money", it was represented that Meyers was guaranteeing, and then later was paying, for the entire program out of his own pocket, he being immensely wealthy and well able to do so (Tr. 240, 310, 335, 370). As to "Machinery", it was represented that they had the best possible equipment (Tr. 240).

Although they stated that any oil venture was a

speculation and a gamble, the claim was made that by virtue of the men, the money and the machinery, and the fact that a thorough, adequate test of the structure was assured, that virtually every gamble had been removed from the program; that Broome was 99% sure of oil; that the production was likely to be greater than at Toteco, Mexico, where the original well had come in at 150,000 barrels a day (Tr. 249); and that anyone who would not invest, if he could possibly do so, should have his head examined (Tr. 310-11, 335, 341, 345-6, 351, 490, 519-20, 522, 524).

In traverse of representations made in the sales campaign as to the prospects of oil or gas on Frenchman Hills, the Government introduced testimony of Dr. Charles E. Weaver, head of the Department of Geology at the University of Washington at Seattle (Tr. 420-36), and Mr. Walker S. Clute, consulting petroleum geologist and engineer of Los Angeles, (Tr. 436-42), both of whom testified in substance that they had made examinations of the territory concerned and found conditions, as far as ascertainable, altogether unfavorable for petroleum oil or gas in commercial quantities.

Further, Mr. Ralph Arnold, consulting petroleum geologist at Los Angeles, who had been employed by appellant and his associates to make an examination

for them in August, 1936, after all the leases had been sold and the Government investigation had started, testified that he had advised appellant Meyers that oil on Frenchman Hills was unlikely and if there was any gas it was probably a marsh gas (Tr. 464-6, 469).

Dr. Weaver also testified that he had found more than half of the land covered by the leases sold to the public off any geological structure capable of holding oil or gas if it existed, and less than half of the land on such structure (Tr. 432).

In the initial stages of the sales campaign no effort was made to conceal the fact that the project was to be financed from sales (Tr. 250-1, 300) with Meyers backing it (Tr. 240). But in March or April, 1935, the story was changed, and instructions were issued for the public to be told, and they were told, that all the bills of the Development Company were being paid by Meyers out of his own pocket (Tr. 251-2, 300), and also that the leases had been purchased from Meyers for \$65,000 (Tr. 251-2).

The effect of the change was to tell the public that there was no connection between the Oil Company and the Development Company, and that drilling was not dependent upon the Oil Company because Meyers was paying for all drilling (Tr. 251, 1379).

Concurrently with, or prior to, the change of the story the records of the companies were changed (Tr. 987). The change in the records was made because of an investigation by the State (Tr. 251). The records were altered in April or May, 1935, by the bookkeeper for all the companies on orders which Markowitz and Simons verified (Tr. 214, 948-9). The certificates and stubs evidencing the original issue of the stock in all three companies were removed from the certificate books, and the stock books were reconstructed in their present form (Tr. 215-6, 954; G. Ex. 176). The effect of these manipulations was to have the books reflect that Meyers and Broome were not interested in the Oil Company or the Corporation in support of the story that the companies were independent (Tr. 260, 946). The note record showing the original loan of \$20,000 was also changed, and the minute books and records of the Development Company were altered to show an execution of a purported demand note payable to Meyers in the sum of \$65,000, the purported consideration being the transfer of the oil and gas leases by Meyers to the Development Company (Tr. 948-9). This was entirely fictitious as no sum had been paid for the Development Company's acquisition of the leases (Tr. 211), nor did the original entries so show (Tr. 950, 955, 979).

At the same time the original books of account of the Corporation and Oil Company were altered to show the execution by the Corporation to the Development Company of a purported note in the sum of \$65,000 in consideration of the transfer by the Development Company to the Corporation of the said leases (Tr. 949).

The original entries on these books reflecting the true inter-company transactions of the payment of all the operating expenses of the Development Company by the Oil Company were removed (Tr. 949-50), and the inter-company transactions were transferred to the books of the Corporation and offset against the purported \$65,000 note (Tr. 950). So, also, all reference to the original contract between the companies providing for the proceeds of sales to be used for the payment of drilling operations was removed. Meyers knew of these changes (Tr. 206, 1372).

In May, 1935, the Corporation and Oil Company were merged retaining the name of the Oil Company, and from then on it was represented to the public that the Oil Company and the Development Company were separate and distinct companies, William Markowitz and Simons being the Oil Company, and Meyers and Broome, the Development Company (Tr. 260, par. 4).

Salesmen were instructed at the time a sale was made and the contract signed that the purchaser must sign an assignment and agreement whereby the purchaser assigned his acreage to the Development Company under a so-called "Community plan of development" (G. Exs. 10 A-F, Tr. 194; 244, 270-1). The assignment and agreement to the Development Company provided that the Development Company would drill the necessary test wells and develop the field, retaining 22½% of any oil produced, and pay the assigning purchaser 65% thereof (G. Ex. 10-B). During the sales campaign the investors were told that this form of lease afforded greater protection to them than would stock (Tr. 253).

The Oil Company started selling leases in April, 1934 at \$10 per acre, arbitrarily raising the price from time to time until leases sold for \$35 per acre, which was the highest price at the close of the sales campaign in April, 1936 (G. Exs. 21, 26-31, P. 31; Tr. 246, 294-5). The actual value per acre was 50c to \$1.00 (Tr. 232). The price raises were based upon fantastic representations as to oil bearing structures and gas encountered in the drilling operations and momentarily expected oil production (Tr. 246-7).

Approximately 35,000 contracts were sold, the

majority on a monthly installment basis, the contracts containing an option clause which was used as a basis for obtaining further purchases at the time of an impending price raise (Tr. 247).

Shortly before the sales campaign ended J. F. Simons, William Markowitz and Meyers attended an SEC meeting in Washington, D. C. in connection with an inquiry of that Commission concerning the activities of the companies (Tr. 1136). Meyers was present at the hearing, and Markowitz made statements to the effect that Dr. Meyers would drill the well, and that it made no difference how much time and money it took; that Meyers had sold the leases to him and his associates for \$65,000, which had been paid; that not one cent from the sale of leases was used to pay Dr. Meyers; that when they first came from California they had \$100,000.00, \$65,000.00 of which was given to Meyers for the purchase of leases, and that the entire \$100,000 had been used before the Oil Company started functioning; that Meyers would drill the well until oil was found or until he was advised by experts that no oil was there (Tr. 1136-41).

Meyers personally told the head of the Commission that he was going to drill until he found oil or was so told by experts that no oil was there, and that up to March, 1936, he had spent \$200,000 in drilling

operations, and that not one twenty-five cent piece had been furnished to him by the Development Company, and that he had been paid \$65,000 for the leases (Tr. 1138-40).

Shortly after that, in April, 1936, the sales campaign closed (Tr. 329, G. Ex. 35, Issue of April 1, 1936, Pg. 1). The explanation given the salesmen for the closing of the campaign was that all of the leases intended for the people had been sold, and that the defendants would hold the rest for themselves (Tr. 329).

At the close of the campaign the gross sales totaled \$2,855,523.50, mainly on installment contracts from over 30,000 investors (Tr. 1165). The branch offices were kept open until June 15, 1937 to continue collections. Total collections from investors up to October 22, 1937, when a receiver was appointed for the Development Company, was \$1,904,536.28 in cash, and in securities, merchandise and services, \$38,865.28, making a grand total of \$1,943,401.56 (Tr. 1165-7). This total includes \$45,338.44 which was collected as execution fees (Tr. 1167).

In June, 1936, the sales managers were told that Meyers, Broome, Markowitz and Simons had decided to increase the stock of the Development Company

from the original 640 shares for the purpose of having the investors convert their lease holdings to shares in the Company at the rate of eight shares for each acre held (Tr. 253).

G. Ex. 48 (Tr. 383-91) shows the form of general letter mailed to leaseholders to induce them to transfer. This finally resulted in Markowitz and Simons holding 270,000 shares of the Development Company, which was sufficient to control that company and enable them to appoint a board of directors from investors, which they did, and to direct the company's affairs as they pleased (Tr. 254, 256, 539-40; G. Ex. 13). No stockholders meeting was ever held (Tr. 258; G. Ex. 13).

The promoters then organized the Peoples Drillers, Inc. on June 9, 1936 (G. Ex. 14; Tr. 1233). All the equipment and assets of the Development Company except the leases, were turned over to this corporation, and that company was to continue the drilling (Tr. 1233). All the stock in the new company was held by Meyers and William A. Broome (G. Ex. 14). This corporation undertook the drilling operations until September 8, 1936, at which time the depth of the well was 2,003 feet, when a cave-in occurred. Drilling did not resume again until November 13, 1936 after Meyers had succeeded in withdrawing

from his drilling obligations (G. Ex. 35, April 30, 1937, Pg. 5).

The withdrawal was arranged through a tripartite agreement dated October 15, 1936, executed by the Oil Company, the Development Company and Peoples Drillers, Inc., which relieved Meyers and Peoples Drillers, Inc. from the drilling obligations and transferred those obligations to the Development Company (Tr. 535-36, 540).

Under this agreement Peoples Drillers, Inc. returned the drilling equipment to the Development Company in consideration for a $12\frac{1}{2}\%$ royalty interest in any production. The Oil Company transferred to the Development Company its remaining lease contracts receivable in return for a 10% royalty interest in any production. The Development Company to which the investors had transferred their leases for stock, and with a board of directors controlled by Markowitz and Simons (Tr. 254, 256) was granted the right to continue the drilling from the proceeds of the future collections on the outstanding lease contracts (D. Ex. A-40, A-41, A-44).

This agreement included provisions that if the Development Company should become unable to continue drilling, all drilling equipment was to be re-

turned to Peoples Drillers, Inc. (Tr. 1233-34) and Meyers had the option to resume drilling, but there was no legal obligation upon him to do so (Tr. 255, 872, 875, 1383).

Before these contracts were signed there was a meeting of the board of directors of the Development Company on the proposal of the Development Company to assume the drilling operations under the provisions above set forth (Tr. 535).

Markowitz and Simons were present, and Meyers was called in for consultation. The argument was that because Meyers was an old man, and to safeguard the companies' investment and the drilling operations, the Development Company should take over the drilling program, and Meyers would sit in the background to take over if the program failed (Tr. 535-6; G. Ex. 35, issue of Oct. 30, 1936).

The amount of the contracts receivable which were turned over to the Development Company from the Oil Company totaled \$535,324.65, face value (Tr. 1166). These accounts were all delinquent, but the Board was persuaded to accept the proposal, believing there would be sufficient money coming in to finish the drilling of the one well (Tr. 540).

The Board, being in doubt, asked for assurance

that the drilling would go on if sufficient money was not collected from the delinquent contracts. Meyers said that he felt himself personally responsible to carry on in such an event, and the equipment would go back to him and his associates so they could carry on (Tr. 536, 540). Markowitz, Simons and Meyers were requested to become members of the Board, but they declined (Tr. 536). The sales managers objected strenuously to the proposal, but they were over-ridden (Tr. 254-5).

Ultimately the collections from the contracts receivable declined until the receipts were insufficient for drilling operations. Members of the Board went to Markowitz and Simons for financial help, but when they were asked to produce \$200,000 to finish the well they were told, "To go to hell," (Tr. 541). When they reduced their demands to \$50,000, Markowitz and Simons laughed at them, but they did make a small loan, and proposed a new selling program which they had been developing (Tr. 541, 542).

The new scheme thus proposed was called the "Participation Program". It contemplated acquiring leases in several additional sections of the state, and selling what were to be called "participations" of a total amount of \$2,500,000 to finance the same, 25% of the proceeds to go to the Frechman Hills operations.

Sales managers were urged to go to work on the plan, but declined (Tr. 256-7).

The "participation" plan was discussed before the board of directors of the Development Company who were required to sign the application for a permit for the "participation" plan before they could obtain any additional funds for the drilling (Tr. 542).

While there is no evidence that Meyers directly participated in this new scheme, he was about the premises while the new program was being developed, and there is no record of his disapproval (Tr. 362).

The first indictment was returned October 20, 1937, and the appointment by the State of a receiver two days later interfered with the new program, although these events did not stop the drilling on Frenchman Hills, which the receiver continued for more than a year from funds received from the investors (Tr. 452, 874).

The receiver and his attorney talked with Meyers in Los Angeles in 1938, and demanded that he fulfill his promise to furnish sufficient money to continue the drilling until a fair test had been made of the original well. Meyers said he would have to consult his counsel, and would advise them later. He later wrote, but the letter in effect said he felt that

there was no legal obligation on his part to furnish any money for drilling (Tr. 872-875).

Meyers admitted that the receiver had made demands for him to continue the drilling, but that he had refused to do so although he did attempt to get the drilling equipment back from the Development Company on the ground that drilling operations had been suspended thus breaching the agreement (Tr. 1383-87). Meyers was not successful in getting the drilling equipment returned to him as shown by *Peoples Drillers Inc. v. Egan*, 4 Wash. (2d) 36, 102 P (2) 242.

In order to harmonize the story that Meyers was paying for the drilling operations out of his own pocket and that none of the proceeds of the sales were used for that purpose, that the companies were separate and independent companies, and in order to make it appear that all of the money for the drilling was coming from Meyers, the promoters and Meyers engaged in devious methods of making funds available to Meyers so that he might ostensibly pay personally for the drilling operations. This, too, was necessary in order to maintain the fiction that he was an extremely wealthy man to whom money meant nothing.

As indicative of these transactions, and showing

that the funds were furnished to Meyers and were not his own personal funds, the evidence showed the following:

1. Before the records were changed as before indicated, the account with reference to the \$20,000 capital of the Company which was loaned to it showed four notes for \$5,000 each, one of which was payable to Meyers (Tr. 945).

The changed records deleted the name of Meyers with reference to the note, and instead appeared the name of M. M. Black, his attorney, the new note being made payable to Black, but having on it the words, "pay to the order of H. Harry Meyers" followed by Black's endorsement (Tr. 946). This \$5,000 was repaid to Meyers with interest (Tr. 947, 957). He so admitted (Tr. 1378). Thus, Black saw to it that the check issued therefor was paid to Meyers.

2. The setting up of the fictitious \$65,000 note has already been referred to. It is undisputed that this note was made up in April or May, 1935, when the rest of the records were changed, and that prior to that time drilling equipment and expenses had been directly paid for by the Oil Company, but that after the change in records all such expenses were credited on the note to show that Meyers had in fact

made the advance (Tr. 951, 955, 979).

3. On July 6, 1935, the Oil Company issued three checks as follows:

To B. Blank for \$6,321.88 (Tr. 963);
To Louis Roth for \$6,321.88 (Tr. 968);
To M. M. Black for \$5,617.18 (Tr. 957);

which were in connection with the repayment of the original \$20,000 capital with interest. These three checks total \$18,260.94.

On July 10, 1935, Louis Roth deposited these three checks in his checking account at the Union Bank & Trust Company at Los Angeles (G. Exs. 227, 228; Tr. 1057, 1069). An employee of the bank testified that Roth, on depositing these checks to his account, requested their collection be expedited (Tr. 1072).

On July 11, 1935, Roth drew the precise amount of this deposit in currency by his personal check (Tr. 1057, 1072). On the same day Meyers deposited \$18,000 in currency in his checking account in the Bank of America in California (G. Ex. 197; Tr. 1033-4). On that same date Meyers sent a certified check for \$20,000 to the Development Company at Seattle for drilling expenses (Tr. 1039, G. Ex. 219). Previous to this \$18,000 currency deposit, the balance in Meyers' account was far less than \$20,000.

4. On August 31, 1935, William Markowitz in Seattle cashed two Oil Company dividend checks, one payable to himself for \$2,296 (Tr. 972), and the other payable to J. F. Simons for \$5,128 (Tr. 973), being a total amount of \$7,424. Four days later, September 3, 1935, Meyers deposited in his account in the Bank of America exactly \$7,424 in currency (G. Ex. 202; Tr. 1034).

5. On September 21, 1935, J. F. Simons drew a check to "Cash" for \$3,000 on the Oil Company's Seattle bank account (Tr. 1038-9). The bank at that time made a recordex photostat of the check, which is G. Ex. 218. A witness, an employee of the Bank of America at Los Angeles, identified this check as having been deposited in Meyers' account in the Sixth & Alexandria Branch on September 24, 1935. G. Ex. 204 is the deposit slip showing the deposit thereof (Tr. 1038).

6. On September 30th, 1935, William Markowitz ordered \$15,000 in government bonds through the Seaboard Branch of the Seattle First National Bank for delivery to J. F. Simons at Los Angeles. The bonds were purchased, and delivered to Simons on October 4th, 1935 (G. Ex. 241, 242, 246, 254; Tr. 1099, 1101, 1103, 1105). On the same day that the bonds were delivered to Simons in Los Angeles they were

pledged by Meyers as collateral on a \$13,500 loan obtained by Meyers from his Los Angeles bank (G. Exs. 189-91; Tr. 1025-8). The day following, October 5, 1935, after the loan had been granted, Meyers issued his personal check for \$13,500 payable to the Development Company at Seattle for drilling expenses (G. Ex. 221; Tr. 1040).

7. On January 20, 1936, the Oil Company issued a dividend check for \$1,792 to Louis Roth (fourth check, G. Ex. 164; Tr. 976). Roth deposited this check in his account in Los Angeles on January 23, 1936 (Tr. 1059, 1074). On the same day Roth purchased a cashier's check for the same amount (G. Ex. 237-8; Tr. 1082-5). On the very same day this cashier's check was deposited in Meyers checking account in Los Angeles (G. Ex. 207; Tr. 1036, 1042).

8. On January 20, 1936, the Oil Company issued the following dividend checks: B. Blank, \$1,792 (Tr. 964); Dr. Einzig, \$640, (Tr. 974); M. M. Black, \$5,512 (Tr. 961); making a total of \$7,944. On January 24, 1936, these three checks were deposited by Louis Roth in his account in Los Angeles (Tr. 1060). On the same day he purchased a cashier's check for \$7,944 (G. Exs. 239, 240; Tr. 1086-7). On this same day this cashier's check was deposited in Meyers'

checking account in California (G. Ex. 208; Tr. 1037). Roth himself brought in the cashier's check and deposited it to Meyers' account (Tr. 1094).

9. On April 16, 1936 Roth cashed his personal check at the Union Bank & Trust Company for \$15,000, and took currency (Tr. 1061, 1091). That same day Meyers paid the above mentioned \$13,500 loan in currency (Tr. 1025, 1029, 1094).

Six days prior to Roth's cashing his personal check for \$15,000 as noted, Roth had deposited two dividend checks of the Oil Company for a total of \$45,650, one check being in the amount of \$11,200 payable to himself (G. Ex. 165; Tr. 975), the other check being for \$34,450 payable to Black (G. Ex. 123; Tr. 962).

The Oil Company's \$15,000 government bonds which Meyers pledged as collateral on the above loan were released to Meyers when he paid the loan, and later found their way back to the Oil Company for the records show that these precise bonds were later sold by that Company (G. Ex. 243; Tr. 1098).

It should be noted, too, that Meyers had previously found it necessary to borrow money because on May 6, 1935, he borrowed \$25,000 from his bank on collateral security, not further identified in the rec-

ord (Tr. 1023; G. Ex. 189, Tr. 1025).

A summary based on Government Exhibits in evidence showed that the total amount of the Oil Company's checks bearing Roth's endorsement were originally payable as follows:

Louis Roth	\$ 96,781.88
B. Blank	10,801.88
M. M. Black	55,371.18
Dr. L. W. Einzig	960.00
Total	<u>\$163,914.94</u>

The summary also disclosed that during July, 1935, to April 1936, Louis Roth drew in currency \$65,915.94 by way of his personal checks (Tr. 1155).

The total of Oil Company checks cashed for currency by J. F. Simons, William Markowitz, Louis Roth and Meyers was \$151,216, which together with Roth's personal check currency transactions makes a total of \$217,131.94 (Tr. 1157, 1159).

The only amount the records showed directly drawn by Meyers from the Development Company and the Oil Company is \$8,288.19 as reimbursement for executive expenses (Tr. 1160-1).

The books and records of the Oil Company, which was the only one having any operating income, show

the dividend checks were issued in the following names and amounts:

M. M. Black	\$ 49,754.00
B. Blank	33,000.00
L. Einzig	12,000.00
Louis Roth	88,720.00
William Markowitz	107,076.00
J. F. Simons	188,850.00
<hr/>	
Total	\$480,000.00 (Tr. 1167)

The books also reflect additional payments to William Markowitz of \$77,616.46 and to J. F. Simons \$52,774.51 (Tr. 1168).

It should be remembered that the only contributions shown as a basis for the enormous dividends and payments was the \$20,000 original capital, \$10,000 of which was furnished by Meyers, and that was repaid. Of those shown as receiving dividends only Meyers, Markowitz and Simons were active in the selling campaigns and actual work. Black, Blank and Einzig contributed nothing, either in money or in services, although they did act as conduits for money flowing to Meyers. Roth may have contributed \$5,000 of the \$10,000 advanced by Meyers, but he did nothing to forward the enterprise, unless his acting as a conduit for money flowing to Meyers can be said to be of benefit to the enterprise.

ARGUMENT

We discuss the assignment of errors upon which appellant relies in his brief (App. Br. 27) in the numerical order there given.

Strauss Letter — Assignment of Errors Nos. 1 and 2

Government witness John Sparks on his direct examination on behalf of the Government testified generally as to what he knew of the connections of appellant with Mr. Strauss, the Golden Gate Bridge, the firm of Strauss & Paine, Inc., the Strauss Corporation and Strauss Engineering Company, and the amount of money paid by Strauss to Meyers (Tr. 681-5).

On cross-examination appellant, over the strenuous and continued objections of the Government, had this witness identify the signature of Strauss on a great mass of letters, and such letters were offered and admitted in evidence solely upon such identification. There was no proof that the letters were ever delivered, nor that the witness knew anything about the contents of the letters, nor their execution.

The manifest object of these letters, which were clearly hearsay and beyond the scope of the direct examination, was to show that appellant was in fact very intimate with Strauss, and that he was acknowl-

edged by Strauss to be, by inference at least, partially responsible for the construction of the Golden Gate Bridge as well as being connected with some of the Strauss Corporations. The witness being entirely ignorant of the contents and circumstances surrounding their execution could not be examined thereon in rebuttal of the inferences.

Some of the defendant's exhibits thus admitted were communications by Strauss to third parties (D. A-68, A-69, A-71, A-77). It should be borne in mind that Strauss was dead at the time of the trial.

On redirect examination the Government on examining the same witness (Tr. 860), and in rebuttal of the defendant's exhibits mentioned, likewise asked the witness if he recognized Strauss' signature on G. Ex. 98, which he did, and thereupon the exhibit was offered (Tr. 860, 865, 870), and was admitted by the Court over the objection of appellant on the ground that the exhibit was incompetent and hearsay. This letter in effect stated that Meyers had nothing whatever to do with the Golden Gate Bridge nor was in any way responsible for the conception or construction of the Golden Gate Bridge.

It should be here noted that everything mentioned in this exhibit was overwhelmingly proved in the case.

Also, when Meyers himself took the stand he could relate nothing material which he did to further the project nor his relationship to Strauss which would warrant the representations which he had allowed to be made concerning him.

The Trial Court, in overruling the motion for new trial, set forth his reasons for admitting both the defendants' exhibits and the Strauss letter. We quote the Court's language (Tr. 1451-3):

"Now, the situation that was materially different in this case from that that prevailed in the previous trial was that immediately following the Government's opening statement counsel for the defendant made an opening statement that went into great detail and advised the Jury as to the nature of the proof that would be submitted. On the strength of that opening statement, — and I want to say for counsel for the defense that an effort was made to support the various assertions that were detailed to the Jury, — when they came to making proof in the defense; but by reason of that statement the Court became unusually liberal in the scope permitted on cross-examination, feeling and believing that a great deal of time might be saved. Consequently numerous documents were admitted in evidence then while Government witnesses were on the stand that would not have been within the narrow limits of ordinary cross-examination.

"In the course of such liberal cross-examination the defendant was permitted to introduce a large number of exhibits. I would not attempt to depreciate that; I could not if I would. They were

all more or less documents that would fall within the narrow limits of the hearsay rule, for the purpose of sustaining the position that he later took as a witness, and for the purpose of sustaining the announcement made by the counsel in his opening statement, that he would show an intimate and close relationship with the deceased Strauss. And the matter of that relationship and the belief that the public all placed in it and relied upon the representation in that regard, was a major, — in this Court's opinion, was a major factor in inducing the public to buy these leases that involved almost two million dollars.

“Now, when the defense offered these various documents in evidence some of them were of an extremely intimate character. One, I recall, and I can not give the number of it, was written in longhand by Strauss and he asked that it be destroyed. And the defendant produced it and offered it here in evidence. They had some secret code between them. Strauss being deceased, of course could not be called to refute the contents and effect of these letters; and to have allowed the record to stand in that position with the defendant having made it, would have created a situation, as far as the triers of the facts were concerned, that would have compelled them to resolve the allegation in the indictment that there was an intimate and close relationship between Strauss and the defendant, and that the defendant was one of the major characters in the construction of the Golden Gate bridge.

“Now, the letter written by Mr. Strauss subsequent to that letter which the defense put in, while it evidences considerable animosity, indicates, likewise, that he felt that he had been overreached and that facts had been presented to him as to the importance and significance of this de-

fendant in the construction of the Golden Gate bridge that he later ascertained were untrue. And, for that reason, I feel that the Court not only acted within its discretion, — and there must of necessity in a case of that nature be a wide discretion with the trial court in the introduction of evidence, — but that it would have been inconsistent in the administration of justice, to deny the admission of the particular document in question, because otherwise you had the record presenting only one side and not giving the whole story.”

The Court was clearly of the opinion that in view of all the circumstances, including Strauss’ death, appellant’s exhibits would have been unfairly prejudicial to the Government in the absence of the admission of the Strauss letter.

The authorities amply sustain the Court’s view both as to discretion and as to the propriety of the admission of the exhibit.

In Wigmore on Evidence, (2d Ed.) Vol. 1, Sec. 15, the rule here applicable is clearly stated:

“On this subject three different rules are found competing for recognition in the different jurisdictions.

“(1) The first is that *the admission of an inadmissible fact, without objection by the opponent, does not justify the opponent in rebutting by other inadmissible facts*: * * *

“(2) At the other extreme is a rule which declares that in general precisely the contrary shall obtain, *i.e. the opponent may resort to similar inadmissible evidence*: * * *

“(3) A third form of rule, intermediate between the other two, is that the opponent may reply with similar evidence *whenever it is needed for removing an unfair prejudice which might otherwise have ensued from the original evidence*, but in no other case. This seems to be the true significance of what may be called the Massachusetts rule: * * *

“* * * This points to the true rule, namely, that since each party is alike in the condition of ‘*volenti non fit injuria*’, *neither can complain of a ruling either admitting or rejecting*, — a waiver being predicable of both. The matter is thus left in the hands of the trial Court. Modify this in certain cases by conceding to the opponent, as of right, to use the curative counter-evidence when a plain and unfair prejudice would otherwise have inured to him, and the rule will be sufficiently flexible.”

The same rule is reflected in Jones on Evidence, (2d Ed.), Sec. 172, pp. 192-3, the substance of which is as follows:

“* * * Testimony which would be clearly irrelevant or incompetent if offered by one party in the first instance may become very pertinent in a rebuttal or in explanation of evidence offered by the adversary.”

The same is set forth in 16 C. J., Sec. 1111, p. 571, as follows:

“Evidence is sometimes admitted, or its admission is held not error, on the ground that similar evidence has been introduced, or proof of the same character has been made, by the adverse party. This is but common fairness. The rule is applicable even where the evidence first introduced

by the adverse party should not have been received, on account of its being incompetent, irrelevant, immaterial, or hearsay.”

The same rule is repeated in 22 C.J.S., Sec. 660, Pgs. 1040-1 and 31 C.J.S., Sec. 100, p. 913.

In *Bogk v. Gassert*, 149 U.S. 17, 37 L.Ed. 631, the rule is recognized, and the Court after first stating that the plaintiff was allowed to testify over the defendant's objection as to a conversation occurring prior to a written agreement says:

“In rebuttal, Steele and Gassert were put upon the stand and asked as to the conversation which took place at the attorney's office at the time the deeds and contract to re-convey were made. This conversation was admitted, and defendant excepted. Now, while this might have been improper as original testimony, it would have been manifestly unfair to permit Bogk to give his version of the transaction, gathered from conversation between the parties, and to deny the plaintiffs the privilege of giving their version of it. The defendant himself, having thrown the bars down, has evidently no right to object to the plaintiff having taken advantage of the license thereby given to submit to the jury their understanding of the agreement.”

The rule is likewise strongly affirmed in *Bradley v. Adams Express Co.*, (C.C.A. 6) 89 Fed. (2d) 641 [cert. den. 302 U.S. 698] where the Court, after quoting from *Corpus Juris* to the same effect as above

noted, and from the citations on Wigmore we have before referred to, states:

“The trial court was of the impression that the testimony injected into the record by the appellants was of such a character that in a spirit of fairness the appellees should be entitled to meet it.

“Under the circumstances, the court’s ruling was justified.”

The rule is likewise supported in principle by the following cases: *Ward v. Blake Manuf’g Co.*, (C.C.A. 8) 56 Fed. 437, 441; *Atchison, T. & S. F. R. Co. v. Reesman*, (C.C.A. 8) 60 Fed. 370, 376; *Stevenson v. U. S.*, (C.C.A. 5) 86 Fed. 106, 111; *Warren Live Stock Co. v. Farr, et al*, (C.C.A. 8) 142 Fed. 116, 117; *Emanuel v. U. S.*, (C.C.A. 2) 196 Fed. 317, 322; *Pandolfo v. U. S.*, (C.C.A. 7) 286 Fed. 8, 18 [cert. den. 261 U. S. 621]; *Gin Bock Sing v. U. S.*, (C.C.A. 9) 8 Fed. (2d) 976, 978; *Vause v. U. S.*, (C.C.A. 2) 53 Fed. (2d) 346, 352 [cert. den. 284 U. S. 661]; *Brink v. U. S.* (C.C.A. 6) 60 Fed. (2d) 231, 234 [cert. den. 287 U.S. 667]; *U.S. v. Rollnick*, (C.C.A. 2) 91 Fed. (2d) 911, 918; *Twachtman v. Connelly*, (C.C.A. 6) 106 Fed. (2d) 501, 506; *State v. Ripley*, 32 Wash., 182, 188.

It is evident that there was no abuse of the Court’s discretion in admitting G. Ex. 98 under all the circumstances.

In any event, inasmuch as all of the matters reflected in the letter were otherwise established in the case, there is no prejudice to appellant in G. Ex. 98's being admitted. *Enrique Rivera v. U. S.* (C.C.A. 1) 57 Fed. (2d) 816, 820.

Income Tax Returns — Assignment of Error No. 3

Appellant's assignment of error No. 3 asserts the Court erred in admitting G. Exs. 110-G, 110-H and 110-I, appellant's income tax returns for 1937, 1938 and 1939 respectively. This claim is fully answered by *Shushan v. U. S.*, (C.C.A. 5) 117 Fed. (2d) 110 [cert. den. 314 U.S. 706], as well as *Stroud v. U. S.*, 251 U. S. 15; 64 L.Ed. 103; *Czarlinsky v. U. S.*, (C.C.A. 10) 54 Fed. (2d) 889 [cert. den. 285 U. S. 549], which in principle are against appellant's position.

Likewise, the claimed error which is predicated upon the basis of self-incrimination was rendered harmless when the defendant took the stand and testified on direct in detail concerning his financial worth, and was cross-examined without objection as to his income for the years covered by the income tax returns (Tr. 1388). The income tax returns were certainly material and relevant to the Government's circumstantial negative evidence in traverse of the repre-

sentations made in the sales campaign that Meyers was a multi-millionaire, a millionaire and a man of great personal resources who could well afford to, and would, give Frenchman Hills a thorough and adequate test by the drill.

If appellant wished to preserve his point of self-incrimination when he filed his income tax returns, the objection should have been raised in the return. *U. S. v. Sullivan*, 274 U.S. 259.

The Troeger Transaction—Assignment of Error No. 4

The above assignment of error complains of a portion of the testimony of Ernest A. Troeger, a Government witness (Tr. 899-932). The assignment of error is predicated upon the fact that the testimony was, "incompetent, immaterial and too remote, the only purpose for said testimony apparently was to show a similar scheme and device."

Appellant does not recognize the true ground on which the evidence was offered, and upon which it was admissible. The evidence was clearly admissible upon the ground that it was relevant and material to show that appellant was not, shortly after he returned from Europe, in possession of a large amount of funds as he had asserted; that Meyers was then, as during the Peoples Gas & Oil sales promotion scheme, only a pro-

moter and not a financier; as showing the whole of the Translux transaction in order to show Meyers' relationship to it as bearing upon the representations made in the sales campaign that Meyers was a philanthropist, a great and experienced man with high ideals and motives, a financier and a multi-millionaire, and his experiences in the world of business and finance.

All the foregoing in turn was relevant and material as bearing upon Meyers' intent in allowing and fostering the making of the flagrant misrepresentations concerning him in the sales campaign. This is the true ground upon which the evidence was clearly admissible.

Appellant's view that the evidence was of an unrelated, similar scheme and device is thus ill founded.

The substance of the rules relating to relevancy and materiality are set forth in 22 C.J.S., Sec. 600, p. 918, 919, where it is said:

"While relevancy is not the exclusive test of admissibility, it is, in the main, the principal test * * *. The determination of whether or not the proffered evidence is relevant rests largely in the discretion of the trial court. Broadly stated, the test of relevancy of proffered evidence is whether it tends to cast any light upon the crime charged, * * *."

Ordinarily remoteness in time affects the weight

rather than the admissibility of the evidence, and where the evidence is circumstantial, as here, such evidence is admissible even though it tends only remotely to establish an ultimate fact. *Clune v. U. S.*, 159 U.S. 590, 40 L.Ed. 269; *Wood v. U. S.*, 16 Pet. 342, 10 L.Ed. 987, pp. 994-5; *Louie v. U. S.*, (C.C.A. 9) 218 Fed. 36, 41; 22 C.J.S., Sec. 638, pp. 977-9.

Evidence which is competent and relevant is not rendered inadmissible because it incidentally proves, or tends to prove, the defendant guilty of another and distinct crime. *Johnston v. U. S.*, (C.C.A. 9) 22 Fed. (2) 1, 5; *Miller v. U. S.*, (C.C.A. 9) 47 Fed. (2d) 120, 122; 22 C.J.S., Sec. 683, pp. 1094, 1095.

It should, however, be pointed out that the Government's proof in this connection did not show, or tend to show, any other crime on Meyer's part and no one so contended at the trial.

The Court admitted the evidence as bearing on the appellant's intent (Tr. 912-3), and later concluded the ruling was correct (Tr. 1455). That the matter was material is shown by the fact that the Translux transaction was referred to in appellant's opening statement as one of the factors which appellant would prove as showing that he was a man of great accomplishments, of high ideals and a financier, and as

tending to show the representations made in the sales campaign were true (Tr. 165).

Appellant's testimony when he took the stand included his views of the Translux incident (Tr. 1311, et seq; 1315). There is authority for the proposition that error, if any, was cured when the defendant was examined by his own counsel, as well as cross-examined relative to the same matters. *Sloan v. U. S.*, (C.C.A. 8) 31 Fed. (2d) 902.

It should be noted that the witness testified, all without objection, to the formation of the Translux Company, of meeting Meyers in 1917, that Meyers represented himself as a man of means who had just returned from England who was looking for places to put his money and would see the Translux proposition through (Tr. 899). Also, without objection, the witness identified G. Ex. 101, which shows Meyers being elected as vice president and a member of the board of directors of Translux Company, as well as other details showing his active participation therein. This exhibit also shows that the inventor of the process, J. F. R. Troeger, was to be retained as technical adviser for two years on a salary. Likewise without objection, the witness testified that Meyers acquired stock in the corporation, giving notes in the amount of \$7,500 therefor, that the \$6,000 note became due,

was not paid, and he talked to Meyers several times requesting payment of the overdue note.

Again without objection, G. Exs. 103-6 were admitted. These were all letters signed by Meyers showing his inability to meet the \$6,000 note. Without objection, the witness testified that Meyers said he could not pay the note; that there were two additional corporations formed; that the control of the Translux Company passed to Meyers when he purchased the stock with the notes; that J. F. R. Troeger was to be given his position for two years on a salary; that Meyers promised to take care of him; that they would all make lots of money; and that J. F. R. Troeger believed his statements and would sign anything Meyers asked him to.

G. Exs. 108 and 109, to which objection was made, directly stem from G. Ex. 101, which was admitted without objection. These were clearly competent to show the whole of the transaction. G. Ex. 110, the conclusion of the transaction, was offered to show over Meyers' own signature that he was in fact only a promoter and not a financier, (he is designated in that exhibit as a promoter) and that Meyers did not in fact pay the \$6,000 note, but that all of Troeger's claims against him were compromised by

Meyers paying him \$300.00 and the issuance of some stock.

May we repeat that the evidence was admissible as bearing upon Meyers' intent in allowing the grossly fraudulent misrepresentations to be made in the sales campaign as to his very fine background, that he was a financier, his financial worth and as showing that he knew that such representations were not true. The evidence was thus admissible upon Meyers' knowledge of the falsity of such representations, as well as the representations personally made by Meyers as to his worth and background when he returned from England in about 1917, and thus upon Meyers motives and intent.

Final Report re Golden Gate Bridge — Assignment of Error No. 5

Appellant's objection to the admission of G. Ex. 95 in evidence is not tenable. This exhibit was identified by the Secretary of the Golden Gate Bridge and Highway District as the final official report of Joseph B. Strauss, chief engineer of the bridge, authorized and paid for by the Golden Gate Bridge District, and is merely the last report completing the interim reports by Strauss as chief engineer contained in G. Ex. 94 which was admitted without objection (Tr. 621).

It was offered, as was G. Ex. 94, to show that Meyers was not mentioned in connection with the Golden Gate Bridge by Strauss in his official reports in traverse of the representations during the sales campaign that Meyers was primarily responsible for its construction.

In any event, however, if there was error in the admission of this exhibit, it was harmless in view of appellant Meyers' taking the stand and submitting himself to cross-examination on the question of what, if anything, he did to further the bridge project. As shown by the record, he was unable to show that he did a single material thing to further the project (Tr. 1311-90). *Mitchell v. U. S.*, (C.C.A. 9) 23 Fed. (2d) 260, 263 [cert. den. 277 U.S. 594]; *Temperani v. U. S.*, (C.C.A. 9) 299 Fed. 365, 367; *Dean v. U. S.*, (C.C.A. 5) 246 Fed. 568, 574-5.

Restriction of Cross-Examination of John S. Swenson
— *Assignment of Error No. 6*

Appellant here complains of the Court's ruling in restricting his cross-examination of John S. Swenson, the Postal Inspector who had charge of the case. The claimed error is two-fold and falls into two separate categories.

The first error alleged is that the Court sustained

the Government's objection to a question to the witness concerning his activities in connection with the grand jury. The question propounded by appellant, in substance, was that when the grand jury was in session in the Fall of 1937 and it was rumored they were considering an indictment in this case, wasn't it true that hundreds of people asked permission to appear before the grand jury, and wasn't it true the witness told those people that he assumed the responsibility of telling them that they couldn't go before the grand jury in opposition to the issuance of an indictment (Tr. 890).

To this question the Government objected that what the grand jury does is its own business, and that the question had no bearing on the case, which objection the Court sustained. Appellant voiced an objection, but did not state the grounds therefor. No exception was allowed by the Court (Tr. 890-1). No statement was made by appellant as to what was intended to be shown by the inquiry, nor was any offer of proof made with respect thereto, nor suggestion made that the matter be pursued by further questioning of the witness in the absence of the jury to show the purpose of the inquiry and its admissibility.

It should be observed that the indictment herein was not returned in the Fall of 1937, but on Decem-

ber 2nd, 1938 (Tr. 2, 68). The question, therefore, did not bear upon the indictment upon which the appellant was here tried. The reference to the 1937 grand jury was apparently in connection with the first indictment returned in this case, which is not reflected in the transcript herein. Based upon this ground alone, the question was not material or relevant.

The question is susceptible of being interpreted as an attempt to show that the grand jury action was not warranted because of the exclusion of witnesses seeking to be heard, thus laying the foundation for an argument to the jury that the grand jury had not acted with all of the available evidence before it. Obviously this method of making such a showing would be improper irrespective of any other remedy open to appellant on such an issue.

Appellant having failed to give any reasons for the grounds of his exception, or to make any statement as to what was intended to be shown, as clarifying the question, this assignment of error cannot be reviewed. *Brown v. U. S.*, (C.C.A. 9) 9 Fed. (2d) 589; *Sacramento Suburban Fruit Lands Co. v. Miller*, (C.C.A. 9) 36 Fed. (2d) 922; *Central Supply Co. v. Carter Clothing Corp.*, (C.C.A. 3) 35 Fed. (2d) 172; *McVeigh v. McGurren*, (C.C.A. 7) 117 Fed. (2d) 672 [cert. den. 313 U.S. 573].

The restriction of cross examination being in the sound discretion of the trial Court, it is submitted that there was no manifest abuse of discretion under all the circumstances. *Lau Foo Kau v. U. S.*, (C.C.A.9) 34 Fed. (2d) 86; *Gates v. U. S.*, (C.C.A. 10) 122 Fed. (2d) 571, 577 [cert. den. 314 U.S. 698]; *Delno v. Market St. Ry Co.*, (C.C.A. 9) 124 Fed. (2d) 965, 967; *Glasser v. U. S.*, 315 U. S. 60, 83.

In any event, however, if it was error it was harmless in view of all the evidence, and particularly as the defendant in his case in chief did not attempt to offer any evidence whatsoever to the same effect or even remotely tending to show bias or prejudice on the part of the witness Swenson. See trial Court's discussion (Tr. 1456). *Sawyear v. U. S.*, (C.C.A. 9) 27 Fed. (2d) 569, 571.

Alford v. U. S., 282 U. S. 687, cited by appellant, is not in point as the occupation and environment of the defendant as bearing on his bias and credibility is not here present, nor is the factor of showing that he hoped for some reward from the Government a factor as it was in the cited case.

In any event, the question had but slight bearing on the issue of bias and credibility and does not constitute reversible error. *District of Columbia v*

Clawans, 300 U. S. 617, 632.

The second error argued under the above assignment is that the Court should have allowed appellant to show through cross-examination of the witness Swenson that the witness opposed a stay of execution of sentence as to the defendant William Markowitz when the matter was before the District Court on November 26th, 1941 (Tr. 890-898). A reading of appellant's offer of proof shows that appellant was in no wise concerned with that proceeding, which was with reference to the judgment and sentence of the defendant Markowitz and the defendant Simons, who were convicted in the first trial of this cause in 1939 (Tr. 71). In the first trial the jury disagreed as to appellant Meyers (Tr. 70). The re-trial of this cause as to Meyers alone did not begin until October 5th, 1942 (Tr. 71).

Any recommendations or views of Mr. Swenson with regard to Markowitz or Simons certainly was not competent or relevant as to his bias or prejudice, if any, against appellant Meyers. Besides the record in this case reflects that Mr. Swenson merely urged that the sentence of Markowitz and Simons be put into effect as soon as possible in view of the unusual delay in the commencement of their sentence. It is evident that none of the evidence which appellant thus sought

to introduce would have shown any bias or prejudice against appellant.

Admission of Government's Exhibit 23 — Assignment of Error No. 7

This assignment of error relates to the admission of G. Ex. 23 (Tr. 221). It should be observed that the witness Hurwitz without objection testified that the resolution of the Northwest Gas & Oil Association (G. Ex. 21), which was obtained by Meyers and others under misrepresentations (Tr. 224-6) was later rescinded, and that G. Ex. 23 was the letter signed by the witness by the authority of Luther Weden rescinding such resolution, and which was mailed to the Oil Company and the Development Company (Tr. 220).

The only objection made thereto is that it was "incompetent" (Tr. 221). Such a general objection is insufficient to present any question for review. *Miller v. U. S.*, (C.C.A. 9) 4 Fed. (2d) 384; *Hart v. U. S.*, (C.C.A. 9) 11 Fed. (2d) 499; *Panzich v. U. S.*, (C.C.A. 9) 65 Fed. (2d) 550.

Aside from that point, however, the colloquy ensuing between the Court and counsel concerning the admission of the exhibit clearly indicated that the only ground for the objection urged was that the letter was written prior to the termination of the sales campaign

(Tr. 221). This specification was erroneous as the letter was date March 17th, 1936, and the sales campaign did not close until April 15th, 1936 (Tr. 246, 294-5). The assignment is thus without merit.

*The Rejection of Defendant's Exhibits A-122, A-123
and A-131 — Assignments of Errors
Nos. 8, 9 and 10*

Assignments No. 8 and 9 deal with the Court's rejection on cross-examination of two letters, Dfts. A-122 and A-123, the first being a letter written by government witness Blodgett to W. A. Broome as president of the Oil Company (Tr. 1124) and the reply of Broome thereto (Tr. 1126).

The Government's direct examination of the witness was extremely brief. It consisted of the witness identifying himself as an engineer and geologist, that he never authorized the use of his name as a member of the purported Geological Advisory Committee widely advertised by the defendants in the scheme, that the witness wrote and ordered the use of his name to cease, which letter was acknowledged (Tr. 1129).

Appellant's cross-examination consisted solely of having the witness identify exhibits, some of which were admitted (Tr. 1124-5). The exhibits of which complaint is made clearly were not within the scope of direct examination, and did not even remotely pur-

port to impeach or bear on the credibility of the witness. The record fails to disclose any objection whatsoever to the rejection of either exhibit by the Court (Tr. 1124), and the errors, if any, are not subject to review. *Clark v. U. S.*, (C.C.A. 9) 245 Fed. 112; *Alvarado v. U. S.*, (C.C.A. 9) 9 Fed. (2d) 385; *Hemp-hill v. U. S.*, (C.C.A. 9) 112 Fed. (2d) 505, 507 [re-manded on other grounds, 312 U. S. 657, and aff'd. 120 Fed. (2d) 115].

The same witness was later called as a witness for the defendant (Tr. 1192-1204), and no effort was made to introduce the exhibits nor to attack the credibility of the witness. These factors operate as a waiver under the rule that error in exclusion of evidence is not prejudicial when an opportunity is given to introduce the evidence which is not availed by the defendant. 24 C.J.S. Sec. 1918, Note 20.

Assignment of Error No. 10 is based on the rejection of defendant's A-131, which was a letter from W. A. Broome to government witness Roberts, which was excluded on appellant's cross-examination of such witness. The exhibit does not in any way bear upon the direct examination of the witness, and is clearly without its scope. The record reflects no objection or exception to the rejection of this exhibit (Tr. 1133). Review is foreclosed by reason of the authorities above

cited with reference to Assignments Nos. 8 and 9. The witness likewise later was called as a defense witness for appellant, and no effort was made to introduce this exhibit nor to attack his credibility (Tr. 1178-84). The arguments above noted with reference to the other two exhibits are here applicable.

We submit that there was here no prejudicial error even should the assignments be subject to review.

*Denial of Appellant's Motion for New Trial —
Assignment of Error No. 14*

This assignment is based upon refusal of the Court to grant appellant a new trial (Tr. 72, 153). It is so well established that the refusal of the trial Court to grant a new trial is not reviewable that only a few of the numerous authorities available are here cited. *Sutton v. U. S.*, (C.C.A. 9) 79 Fed. (2d) 863; *Utley v. U. S.*, (C.C.A. 9) 115 Fed. (2d) 117 [cert. den. 311 U. S. 719].

This assignment of error is without merit.

CONCLUSION

We have not discussed any of appellant's assignments of error except those argued in his brief (App. Br. 27) upon the familiar ground that a failure to argue any assignment constitutes a waiver thereof.

We wish to point out to the Court that the trial of this case consumed approximately five weeks, in which a great mass of evidence was introduced and a wide range of inquiry covered. The number of exhibits introduced in evidence runs into the hundreds, many of which are very voluminous. The guilt of the defendant was overwhelmingly and clearly established by competent evidence. The errors urged refer to extremely few of the many exhibits introduced and offered. Under these circumstances an appellate court will not indulge in speculations as to the prejudice from alleged incompetent testimony. *Marron v. U. S.*, (C.C.A. 9) 18 Fed. (2d) 218 [aff'd, 275 U.S. 92, 72 L.Ed. 231]; *Lewis v. U. S.*, (C.C.A. 9) 38 Fed. (2d) 406.

The burden is on appellant to show that any alleged error was prejudicial to him to the extent that on the whole record his substantial rights have been denied. *Berger v. U. S.*, 295 U.S. 78; *Marino v. U. S.*, (C.C.A. 9) 91 Fed. (2d) 691 [cert. den. 302 U.S. 764]; *Coplin v. U. S.*, (C.C.A. 9) 88 Fed. (2d) 652 [cert. den. 301 U.S. 703].

This burden appellant has not sustained. *U. S. v. Trenton Potteries Co.*, 273 U.S. 393-4; *Simons v. U. S.*, (C.C.A. 9) 119 Fed. (2d) 539 [cert. den. 314 U.S. 616]; *Hemphill v. U. S.*, *supra*.

The judgment should be affirmed.

Respectfully submitted,

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In The United States
Circuit Court of Appeals
For the Ninth Circuit

H. HARRY MEYERS,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

Reply Brief of Appellant

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, SOUTHERN DIVISION

HONORABLE CHARLES H. LEAVY, *Judge*

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OCT 12 1944

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SUMMARY OF THE EVIDENCE

Space does not permit a complete summary of the evidence nor an opportunity to point out all of the statements of the appellee which do not conform strictly with the facts herein; therefore, we shall content ourselves in briefly setting forth the evidence relating to some of the Assignments of Errors.

It may be said at the outset that many of the statements made by counsel for the appellee in his "Summary of Evidence" are actually the construction placed upon the evidence by counsel for the appellee and do not reflect the full and complete evidence. In this case, as in many criminal cases, there was a sharp conflict of evidence.

The first indictment in this case was returned, as set forth in the appellee's Brief, on October 20, 1937, and two days thereafter a receiver was appointed in the State Court. G Ex. 98 was dated June 2, 1937 (Tr. 866). The particular indictment on which the appellant Meyers was tried was returned December 2, 1938, and was the second indictment returned involving the identical violations charged in this particular case. The jury in the first trial on this particular indictment disagreed as to the defendant Meyers while convicting four others (Tr. 70). During the trial of that case no evidence was submitted on behalf of the defendant Meyers, the case having been submitted to the jury after the close of the Government's case (Tr. 1389 and 1390). G Ex. 8 was a preliminary agreement (Tr. 1329) executed March 16, 1934, but that said agreement was later superseded by an agreement between the parties, and all of the contracts, as evidenced by G Ex. 8, were to have been destroyed, which destruction was to act as a rescission (Tr. 1331). About the 1st of April, 1934, it was agreed between Meyers, Markowitz, Simons and Broome that the Oil Company was to buy the leases for \$65,000.00 and execute a note therefor to the Development Com-

pany. Meyers and Broome were to drill the well, using the \$65,000.00, as evidenced by the note, and such other moneys to be furnished by Meyers as may be necessary to drill the well. Meyers was not to have anything to do with the selling of leases or the oil company (Tr. 1330). It was in conformity with that agreement that the books of the corporation and oil company were corrected to show the true agreement between Meyers, Markowitz, Simons and Broome. The Troeger transaction (Assignment of Error No. 4), to which the witness Ernest A. Troeger was allowed to testify, took place between the years 1919 and 1923, the last transaction having taken place at least eleven years prior to the time that H. Harry Meyers met Broome. The testimony of Troeger was introduced solely on the ground that it would establish evidence tending to show the intent of H. Harry Meyers in this case. The record discloses the following:

“MR. HILE: I can state the purpose, if your Honor please.

THE COURT: Similar conduct and acts, for the purpose of establishing intent in this case?

MR. HILE: Yes, that is one of the aspects of the whole situation.

MR. SIMON: I object to it as being too remote, if that is the purpose. * * * * *

MR. HILE: The purpose is to show that the defendant Meyers promised this witness' father employment for his lifetime; * * *. It goes to show what relation defendant Meyers had to

the Translux Corporation, with reference to the notes and transactions as a whole, * * * and propose further to show by contract that the witness' father was ultimately put out of the picture.

THE COURT: The only concern of the Court is as to whether or not this matter is too remote for the purpose of proving intent in this case. * * * The objection will be overruled. * * * The jury is instructed, of course, that it is admitted not to prove any issue in this case, other than the bearing it might have, if any, upon the element of intent, which is an important element in this case."

Tr. 911, 912 and 913.

The evidence in reference to G Ex. 98, Assignment of Errors 1 and 2, is discussed in the argument and will be further referred to in succeeding pages of this brief.

ARGUMENT

Assignments of Errors 1, 2, 5 and 7, inclusive

These are discussed on pages 27 to 44 inclusive of our opening Brief, and on pages 42 to 50 inclusive, 56, 57, 62 and 63 of appellee's Brief. The appellee has argued that G Ex. 98 was admitted in evidence because the defense had introduced D Ex. A-68, A-69, A-71 and A-77, and states in his Brief at page 43 that such exhibits were communications by Strauss to third persons. A-68 was a letter written by Strauss to Meyers enclosing a letter Strauss had written to his son and was a communication issued by Strauss with the intention

that Meyers should note the contents of that letter, which was enclosed (Tr. 699). A-69 is a letter addressed to Meyers from Strauss in which he enclosed copy of Weinfeld letter (Tr. 70). A-71 is a letter directed to August Fritze in which he (Strauss) sets forth the agreement entered into between Meyers, Strauss and Fritze and negotiations on the Golden Gate Bridge (Tr. 721). A-77 is a letter addressed to H. Harry Meyers, written by Strauss (Tr. 731).

John Sparks, through whom these exhibits were introduced, was called as a witness by the Government and testified that he was familiar with the Strauss' files. Sparks testified: "I knew what he (Meyers) was doing only from letters." (Tr. 682.)

It must be borne in mind that Sparks was a Government witness called to testify in its case in chief and that the Government was attempting to show by Sparks that the appellant had little or nothing to do with Strauss. All of said Exhibits A-68, A-69, A-71 and A-77, and incidentally there were many more, tended to show what should have been reflected in the Strauss' files. The letters introduced by the defendant were proper cross examination and became material exhibits to show what the Strauss file contained and to disprove the contention of the Government through the witness Sparks that Meyers had little or nothing to do with Strauss. The matter was opened up by the Government in its case in chief. G Ex. 98 was a letter written by Strauss to a Government investigating officer a short time before the first indictment was returned in this case. By

the wildest stretch of the imagination it cannot be said that G Ex. 98 was proper and competent evidence and not reversible error. The only grounds on which the appellee suggests that G Ex. 98 was competent was because of the introduction of defendant's Exhibits A-68, A-69, A-71 and A-77. G Ex. 98 was purely hearsay of the rankest sort and was reversible error.

In an action for conspiracy, statements made in a letter written by a third person, not charged as a conspirator to be an agent of defendants, are mere hearsay.

Consolidated Grocery Co. v. Hammond, 175 Fed. 641 (CCA Fla.).

The contents of a letter written to a plaintiff by a third person not connected with defendant which purports to contain a statement made to a writer by defendant are inadmissible as hearsay.

Security Trust Co. v. Robb, 142 Fed. 78 (CCA N.J.)

A letter between third parties reciting statements said by the writer to have been made to him by defendant is not admissible against defendant.

Nevada Co. v. Farnsworth, 102 Fed. 573 (CCA Utah).

"The single Bill of Exceptions in the case is to the refusal of the Court to receive certain letters in evidence. The defendants were charged to have been partners with one George N. Shaw, or to have held themselves out to the public as

such. This was the only issue of the case. To rebut the plaintiff's proof, the defendants offered correspondence between themselves, and some letters to them by one Ira Eaton, their agent. It is hard to perceive on what grounds the parties should give their private conversations or correspondence with one another or their agent to establish their own case, or show that they had not held themselves out to the public as partners of the deceased."

William Freeborn, et al v. H. Martin Smith,
2 Wall. (69 U. S.) 160, 176; 17 L. Ed.
922, Nevada.

"The reception of oral statements, letters or reports of petitioner's geologist, now deceased, if proven and authenticated, would violate more than one rule of evidence. An insuperable barrier would be the hearsay rule and moreover the oral statement, letter or report the answer seeks to bring forth could at most have been the act of an agent dealing with his principal and without semblance of conclusiveness and certainly not an admission against interest. (Citing authorities.) In the absence of the witness the petitioner would be powerless to show the methods employed in arriving at the conclusions or opinion and like matters, all of which enter into the reason for the rule which excludes the testimony of deceased witnesses whom the adverse party has not once had an opportunity to cross examine."

U. S. ex rel Tennessee Valley Authority v. Neal, et al, 45 Fed. Supp. 382.

"Hearsay is that kind of statement which does not admit of testing by cross examination."

Words and Phrases, page 178.

Jennings v. U. S. (CCA Ga.), 73 Fed. (2) 470, 473.

The letter introduced as G Ex. 98 was an effort on the part of the Government to prove their case in chief by indirection when they could not make proof by direct evidence. It was an unsworn statement made out of Court by a deceased person expressing an opinion as to the defendant and was introduced without benefit of the writer being present in Court for cross examination.

“In the absence of statute, the death of a declarant is not in itself a ground for invoking an exception to the hearsay rule which renders unsworn statements admissible in evidence.”

20 Am. Jur. 521, Par. 608;

Lucas v. U. S., 163 U. S. 612, 41 L. Ed. 282,
16 S. Ct. 1168;

Queen v. Hepburn, 7 Cranch (U. S.) 290,
3 L. Ed. 348.

“Ordinarily, a declaration of an opinion or conclusion is inadmissible if the declarant would not have been permitted to state it as a witness.”

20 Am. Jur. 462, Par. 548.

“The hearsay rule excludes in general statements made out of Court offered as proof of the facts asserted.”

20 Am. Jur. 460, Par. 544.

The Government's Ex. 98 was written by Strauss to a third party in a matter in which Meyers was an entire stranger.

“Generally speaking, the rights of an individual cannot be effected by written statements of persons who act in an unofficial capacity in respect to matters to which he is a stranger. As to him such rights are inadmissible.”

20 Am. Jur. 769, Par. 912;

Hegler v. Faulkner, 153 U. S. 109, 38 L. Ed. 653;

Bates v. People, 151 U. S. 149, 38 L. Ed. 106;

Ins. Co. v. Guardiola, 129 U. S. 642, 32 L. Ed. 809;

Herron v. Dater, 120 U. S. 464, 30 L. Ed. 748;

Vicksburg v. O'Brien, 119 U. S. 99, 30 L. Ed. 299;

Maxwell v. Wilkerson, 113 U. S. 656, 28 L. Ed. 1037;

Buena Vista County v. Iowa Falls & SCR Co., 112 U. S. 165, 28 L. Ed. 680;

Peralta v. U. S., 3 Wall. (U. S.) 434, 18 L. Ed. 221.

“Generally, correspondence of persons where offered, as evidence of facts stated therein must be excluded under the general principal respecting *res inter alios acta*.”

20 Am. Jur. 807, Par. 958.

Gregary Consol. Mining Co. v. Starr, 141 U. S. 222, 35 L. Ed. 715;

Grand Tower Min. & Mfg. v. Phillips, 23 Wall. (U. S.) 471, 23 L. Ed. 71;

Druyter v. Dunbar, 5 Wall. (U. S.) 318, 18 L. Ed. 489;

Frank v. Frank, 209 Ala. 630, 96 So. 859, 32 A. L. R. 1478.

“Unless the party against whom the communications are tendered is in some way connected therewith or knew and approved their utterance.”

Owings v. Hull, 9 Pet. (U. S.) 607, 9 L. Ed. 246;

Title Guaranty & S. Co. v. Bank of Fulton, 89 Ark. 471, 117 S. W. 537;

Nash v. Nunn Title Ins. Co., 163 Mass. 574, 40 N. E. 1039, 28 L. R. A. 753.

Government's Ex. 98, being an unsworn communication uttered out of Court, made by a deceased person not present for cross examination to a stranger to the defendant, constituted hearsay under all the rules of hearsay evidence and was of such a nature as to be highly prejudicial to the rights of the defendant. It might respectfully be noted, parenthetically, that this letter was not introduced against the defendant in the first trial in which the jury disagreed. It can reasonably be said then that this hearsay evidence was the final prejudicial error which caused an adverse verdict to be rendered against the defendant.

Assignments of Error No. 3, 8, 9, 10 and 14

These Assignments of Error are discussed in our opening Brief and we shall not take the space to discuss them further here.

Assignment of Error No. 4 — the Troeger transaction

The appellee argues that the true ground on which the evidence was offered and upon which it was admitted was to show that Meyers was only a promoter and not a financier, but, as the record shows and as has been set forth on page 3 of this Brief, the evidence was admitted on one ground and that ground was to show intent. It must be remembered that this evidence was admitted in the Government's case in chief, not as rebuttal, and was admitted on the ground as above set forth that it had some bearing on Meyers' intent. Therefore, the only ground on which it was admitted was to show a similar scheme and device bearing upon intent in this case. It must also be remembered that the transactions to which Troeger testified were some fourteen years prior to the alleged violation of law charged in this indictment. The appellee argues in his Brief that transactions occurring some fourteen years prior to the offense of the crime charged in this indictment should be admitted to show in their case in chief that Meyers then held himself out as a philanthropist, a great and experienced man with high ideals and motives, a financier, a multimillionaire, etc. Had the

acts complained of by appellee been at all near the time complained of in the indictment, it might be conceivable that the evidence might have been admissible to show intent, but certainly for no other purpose. The most that can be said for the Government's contention is that the acts must have been committed at about the same time as that charged in the indictment.

“* * * In order that a collateral crime may be relevant as evidence it must be connected with the crime under investigation as part of a general and composite transaction.”

Underhill on Criminal Evidence, Third Edition, P. 196, Par. 152.

“* * * On the other hand, if from remoteness in point of time, or from distance in point of place, or by reason of intervening circumstances of whatever nature, the court can see that there is no necessary connection between the two crimes, evidence of the independent and disconnected crime should be rejected. * * *”

Underhill on Criminal Evidence, Third Edition, P. 197, Par. 152.

The strongest rule supporting appellee's contention is shown in *Thomas v. U. S.*, 156 Fed. 897, 911 (CCA 8):

“Nothing is better settled in the law of evidence in any case involving fraudulent intent than that other acts and dealings of the accused of a kindred character to those charged in the case in hand and *performed at or about the same time* are admissible to illustrate and establish the intent or motive in the particular act directly in judgment.”

Wood v. U. S., 16 Pet. 342, 10 L. Ed. 987;

Chitwood v. U. S. (CCA), 153 Fed. 551;

Exchange Bank v. Mass., 79 CCA 278, 149 Fed. 340.

“If a motive exist prompting to a particular line of conduct, and it be shown that in pursuing that line a defendant has deceived and defrauded one person, it may justly be inferred that similar conduct towards another, *at about the same time* and in relation to a like subject, was actuated by the same spirit.”

Butler v. Watkins, 13 Wall. 456, 20 L. Ed. 629.

“Similar fraudulent acts are admissible in cases of this description, *if committed at or about the same time*, and when the same motive may reasonably be supposed to exist, with a view to establish the intent of the defendant in respect to the matters charged against him in the declaration.”

Castle v. Bullard, 23 How. 172, 16 L. Ed. 424.

CONCLUSION

Appellee in his Brief has attempted to justify the errors which were committed by the trial court and it is significant to note that at the conclusion of most of his discussions of the Assignment of Error he uses this language: "In any event, however, if there is error in the admission of this exhibit it was harmless," which can only lead one to believe that counsel for the appellee is convinced that the Assignments of Error claimed by the appellant were well taken and were error. The only question he raises is whether or not they were prejudicial.

It is significant to note that in the first trial of this case the jury disagreed and these errors were not committed in that trial. The logical conclusion must be that it was the commission of these errors and the evidence thus erroneously admitted which were the factors which controlled the jury in arriving at a verdict of guilty in this case. Certain it is that the Government's Ex. 98 was highly prejudicial for the reasons set forth in our Briefs and particularly when one reads carefully that letter and notes that the writer thereof comments on practically every charge of misrepresentation that was made in the indictment.

The Troeger transaction admittedly was offered to prejudice the jury and it, like G Ex. 98, covered practically every alleged misrepresentation charged in the indictment.

It is easy for appellee to say by a mere reading of the cold record that such errors were harmless, but we are of the opinion that only the jury could say that such evidence was or was not the factor, or an accumulation of factors, which caused them to arrive at the verdict returned.

We respectfully submit, therefore, that the errors complained of were prejudicial and reversible errors, that the appellant herein did not receive a fair trial, and that the judgment of the lower Court should be reversed and the cause remanded for a new trial.

Respectfully submitted,

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No. 10325

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

H. HARRY MEYERS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S SUPPLEMENTAL BRIEF.

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APPELLANT'S SUPPLEMENTAL BRIEF.

Statement.

Further consideration of appellant's first and fourth assignments of error is desirable. Heretofore the discussion of Assignment No. 1 has been limited largely to the ground that Government's Exhibit 98 was hearsay and hence inadmissible. Heretofore discussion of Assignment No. 4 by appellant has been limited to a general statement only, which should be amplified both as to the facts and the law applicable thereto.

I.

Assignment of Error No. 1.

Appellant's first assignment of error is:

“That the District Court erred in admitting in evidence, over the objection of defendant-appellant, Government's Exhibit 98, on the ground that the same was incompetent and hearsay.” [Tr. pp. 99-105; App. Op. Br. pp. 56-61.]

Government's Exhibit 98 (letter from Joseph B. Strauss to Post Office Inspector J. S. Swenson) was not only hearsay and, therefore, inadmissible, but it was incompetent for other reasons which will be hereinafter stated:

The Government's brief (pp. 44-49) attempts to justify the admission of Government's Exhibit 98 on the theory that it was evidence similar to that which had been introduced by appellant and that it was necessary to remove any unfair prejudice which might otherwise have ensued from appellant's evidence previously introduced consisting of letters written by Joseph B. Strauss to H. Harry Meyers during a period of time beginning in December, 1928, and ending in June, 1934. These letters are identified in the record as Defendant's Exhibits A-51 to A-107 [Index pp. ii-vi; Tr. pp. 573-857] and establish clearly a close and intimate personal and business connection and relationship between Strauss and Meyers during the period mentioned. The admission of these letters from Strauss to Meyers was proper, since they tend to rebut the contention and evidence of the Government that appellant was not connected or associated with the Joseph B. Strauss interests or with the promotion and construction of the Golden Gate Bridge. It should be noted that this connection and association had

been challenged and denied in the Indictment [Tr. pp. 7-8] and was made a major issue in the case by the Government.

Specifically, the Government contends (its brief, p. 43) that Defendant's Exhibits A-68, A-69, A-71 and A-77 were communications by Joseph B. Strauss to third parties, and that therefore the admission thereof in evidence warranted the admission of Government's Exhibit 98 which was unquestionably a communication by Strauss to a third party, namely, Post Office Inspector J. S. Swenson. This contention, however, is not supported by the facts shown by the record.

A.

Defendant's Exhibits A-68, A-69, A-71 and A-77 Are Not Communications to Third Parties.

Defendant's Exhibit A-68 [Tr. p. 699] is a letter from Joseph B. Strauss to H. Harry Meyers. Enclosed therein was a copy of a letter from Strauss to his son Ralph upon which Strauss asked Meyers' opinion.

Defendant's Exhibit A-69 [Tr. p. 706] is a letter from Joseph B. Strauss to H. Harry Meyers. Enclosed therein was copy of a letter from Strauss to Charles Weinfeld, Chicago, Illinois, relating to business matters and relations between them upon which Strauss asked Meyers for his opinion.

Defendant's Exhibit A-71 [Tr. p. 721] is, in form only, copy of a letter from Joseph B. Strauss to August Fritze. Actually, it is an agreement of settlement between those parties of certain matters in dispute between them in strict accordance with an award made by H. Harry Meyers. The communication bears the signature of

Strauss and an acceptance thereof by Fritze stating that "The above is satisfactory and acceptable. (Signed) August Fritze." [Tr. p. 722.] Reference to the letter is conclusive that it was a contract of settlement in conformity with the award made by Meyers as arbitrator.

Defendant's Exhibit A-77 [Tr. p. 731] is a letter from Joseph B. Strauss to Harry Meyers. Enclosed therein was a copy of a letter from Strauss to William P. Fillmer, President of the Golden Gate Bridge & Highway District, which Strauss wrote "I thought it wise to write such a letter and am sending the copy to you for your information." [Tr. p. 731.]

It thus appears that each and all of the above-mentioned and described letters which the Government says were communications to third parties were, in fact, communications to Meyers and concerned Meyers in his relations with Strauss. The admission of these letters did not justify the admission of Government's Exhibit 98 upon the ground urged by the Government, or upon any other ground.

B.

Government's Exhibit 98 Is Not Similar to the Letters From Strauss to Meyers.

There are striking dissimilarities between the letters from Strauss to Meyers and the letter from Strauss to Swenson. (G. Ex. 98.) Some of these are: (1) the letters from Strauss to Meyers were communications *inter sese* and not with third parties; (2) said letters were declarations by, and against the interest of, Strauss; (3) said letters related to purely contemporary matters; and (4) said letters were not written with a view of litigation.

Government's Exhibit 98 (Strauss' letter to Swenson), admittedly is a communication with a third party: it was not against the interest of Strauss; it was not contemporary, but was written several years after the alleged events mentioned therein; and, obviously, it was written in view of the investigation and prospective criminal prosecution of Meyers. It is thus apparent that there was actually no similarity between the letters from Strauss to Meyers and Government's Exhibit 98.

Moreover, Government's Exhibit 98 is dissimilar from the letters of Strauss to Meyers in other important respects, and is subject to objection and criticism accordingly. Some of these are: (1) Many of the statements in the letter from Strauss to Swenson (Government's Exhibit 98) were based upon (undisclosed) information, from which Strauss expressed his opinions, which would not have been admissible even if he had been present and testifying in person; (2) said letter, in essence, constituted an attack upon the character of Meyers which had not been placed in issue; (3) said letter was manifestly scandalous and malicious; and (4) it was not responsive to any matters in the letters of Strauss to Meyers which had been admitted in evidence.

In view of the substantial dissimilarities between the letters of Strauss to Meyers and the letter of Strauss to Swenson (G. Ex. 98), *supra*, it is apparent that the Government's argument (Its Brief, pp. 43-49) and the authorities there cited, do not sustain its contention concerning appellant's first assignment of error.

C.

Government's Exhibit 98 Was Not Admissible Under Any of the Exceptions to the Rule Excluding Hearsay Evidence.

That Government's Exhibit 98 was pure hearsay cannot be denied. It is well settled that, in general, hearsay evidence is inadmissible. (See 20 Am. Jur. 403, Sections 400, 403; 31 C. J. S. 919, Section 193, and the many federal cases there cited, in footnote 2. See, also, cases cited in Appellant's Opening Brief pages 34-44.)

There are, however, certain exceptions to the rule that hearsay evidence is inadmissible.

20 Am. Jur. 402;

Appellant's Op. Br. p. 34.

These exceptions are stated in 20 Am. Jur. 402, Section 453, as follows:

"While the hearsay rule has been asserted and applied so often that it is not questioned, it seems safe to assert that the courts have generally been willing to relax the rule in the interest of justice. It is recognized that hearsay may be relevant and material. In some cases it may be the only relevant and material evidence, as where a sole witness to a transaction is dead or beyond the reach of a subpoena. While the mere fact that a witness is dead does not render his declarations admissible, if in addition to the death of a witness there are circumstances which attribute verity to his declarations, the hearsay rule may be relaxed to permit the admission of such declaration. *For example, if a witness is deceased, his declarations against his own interest may be admitted in evidence as relevant and material*

to the issues in the case on the theory that he would not tell an untruth against his own interest. Again, the dying declarations of the victim of a homicide are deemed admissible notwithstanding they are hearsay, on the theory that there is little likelihood of a conscious falsification of statements made under such circumstances. Most of the exceptions to the hearsay rule are based upon the necessities of the case. If there is a possibility of obtaining testimony other than hearsay, the law does not generally permit the introduction of hearsay. Thus, one of the conditions under which entries in family records are admitted in evidence, notwithstanding the lack of an opportunity to cross-examine the person who made them, is the death, or at least the absence, of such person." (Italics ours.)

Clearly, the letter from Strauss to Swenson (G. Ex. 98) does not come within any of the exceptions stated, unless it be the declarations against interest of a witness deceased.

D.

Government's Exhibit 98 Was Not Admissible Under the Rule That the Declarations Against Interest of a Deceased Person May Sometimes Be Received in Evidence.

The rule here invoked is stated in 31 C. J. S. 960, 961, Section 218b, as follows:

"Where a declarant is unavailable as a witness because of his death, it is well settled that evidence may, in a proper case, be received of his declarations against his interest, whether or not such declarations are part of the *res gestae*. The absence of privity between declarant and the parties to the suit does not preclude the admission of his declarations, provided they were adverse to his interests.

“On the other hand, the declarations of a person since deceased which are not against his interest are inadmissible; and, where the death of declarant is in issue, it has been held that evidence of his declarations against interest is inadmissible.”

And it is further stated, *idem* p. 962, Section 219:

“To be admissible as a declaration against interest, the declarant must have had an interest in the subject matter of his declaration.

“A declaration is not admissible in evidence unless the interest against which it militated was of either a pecuniary or proprietary nature. Accordingly an unsworn statement of a third person is not admissible merely because it appears to have been against the interest of the declarant by subjecting him to a civil action or to a criminal prosecution. However, the declaration may be admissible where it is against the pecuniary or the proprietary interest of the declarant. . . . Where the declarant had adequate knowledge of the facts stated, and primary evidence cannot be procured, the declaration is admissible if made against his pecuniary interest.”

As supporting the rule, *supra*, see:

Halleck v. Hartford Acc. & Ind. Co., 75 F. (2d) 800;

Citizens etc. Bank v. Santa Rita Hotel Co., 22 F. (2d) 524;

Bonner v. Texas Company, 89 F. (2d) 291.

In *Halleck v. Hartford etc. Co.*, 75 F. (2d) 801, *supra*, the Court said, at page 802:

“Declarations or entries of a person since deceased made against his interest and not with a view to

litigation are evidence, *this exception resting on the probable truth of a statement which is against financial interest when made.*" (Italics ours.)

In *Bonner v. Texas Company*, 89 F. (2d) 291, the plaintiff offered in evidence the statement of the deceased to his wife and another person as to how the accident occurred which resulted in his injury and death. The statement was made about 45 minutes after the explosion and at a place several miles distant therefrom. Upon the admissibility of the statement in evidence, the Court said, page 293:

"To justify admission of Bonner's statement, the doctrine of dying declarations is faintly urged, but that exception to the rule against hearsay is made only in favor of criminal justice and has not been much applied in civil cases. Nor does it appear that the declarant was in fact in *articulo mortis*. That this important witness has died does not render his declarations admissible, *since they were not against his interest*. The general rule that (such) statements . . . are not to be received in evidence, we recently examined along with the established exception touching *res gestae* in *Halleck v. Hartford etc. Co.*, (C. C. A.), 75 F. 2d 800 . . ." (Italics ours.)

In *Citizens Nat'l Bank v. Santa Rita Hotel Co.* (9 Cir.), 22 F. (2d) 524, the statement of the deceased Secretary of the Hotel Company that he issued two stock certificates to himself and forged the name of the President of the Company thereto without right and authority, was admitted in evidence. The Bank assigned this as error. The Court said, page 525:

"It is conceded by counsel for the appellant (Bank) that declarations, oral or written, made by a deceased

person as to facts presumably within his knowledge, if relevant to the matter of inquiry are admissible in evidence as between third parties, when it appears that the declarant is dead; that the declaration was against his pecuniary interest; that the declaration was of a fact in relation to a matter of which he was personally cognizant, and that the declarant had no probable motive to falsify the fact declared. (Citing Minn. Case.) But they earnestly insist that the declaration in question was not against the pecuniary interest of the declarant. With this contention we are unable to agree . . . it will scarcely be contended that a solemn admission by a party that a certificate of stock . . . under which he claims is a forgery is not against his pecuniary interest."

From the foregoing, it is manifest that the declarations of a deceased person are inadmissible unless they were made against his interest. Since the declarations and statements of Strauss in his letter to Swenson were not against his interest, the letter was therefore not admissible.

E.

Government's Exhibit 98 Was Not Admissible on the Ground That It Was Necessary for Removing an Unfair Prejudice Which Might Otherwise Have Ensued From the Admission of the Letters of Strauss to Meyers.

It must be remembered that any and all connection or relationship between Strauss and Meyers in promoting and building the Golden Gate Bridge was challenged and denied by the Government in the Indictment and at all times throughout the trial of the case. The Government's case against Meyers was based very largely upon the theory that the purchasers of interests in oil and gas

leases were deceived and defrauded by representations that Meyers was connected with the Joseph B. Strauss interests in developing and building the Golden Gate Bridge, which representations the Indictment charged were false. Evidence was offered by the Government, and admitted by the Court, to establish this theory. It was therefore competent for the defendant to show, by the letters of Joseph B. Strauss to the defendant, that there had been such a connection and relationship. Strauss, being deceased at the time of the trial, could not testify. His letters to defendant, if against interest, were therefore competent evidence of such connection and relationship.

The vital importance of these letters to defendant and their competency is shown by the following statement of the trial court [Tr. p. 1452]:

“And the matter of that relationship and the belief that the public all placed in it and relied upon the representation in that regard, was a major,—in this Court’s opinion, was a major factor in inducing the public to buy these leases that involved almost two million dollars.

“Now, when the defense offered these various documents in evidence some of them were of an extremely intimate character. One, I recall, and I can not give the number of it, was written in longhand by Strauss and he asked that it be destroyed. And the defendant produced it and offered it here in evidence. They had some secret code between them. Strauss being deceased, of course could not be called to refute the contents and effect of these letters; and to have allowed the record to stand in that position with the defendant having made it, would have created a situation, as far as the triers of the facts were concerned,

that would have compelled them to resolve the allegation in the indictment that there was an intimate and close relationship between Strauss and the defendant, and that the defendant was one of the major characters in the construction of the Golden Gate bridge.”

In view of the Government’s contention that the admission of its Exhibit 98 was necessary to remove an unfair prejudice created by the admission of letters from Strauss to Meyers, brief reference to some of those letters seems necessary and proper.

Defendant’s Exhibit A-51 [Tr. p. 573] is a letter from Strauss to Meyers authorizing the latter to take over the agency of August Fritze to represent Strauss “in the matter of the Golden Gate Bridge” on a basis of settlement satisfactory to Fritze. Defendant’s Exhibit A-52 [Tr. p. 574] is a letter from Strauss to Meyers authorizing Meyers to take over the agency of Charles H. Brennan to “act for my company and myself in securing for me the appointment as engineer of the Golden Gate Bridge District.”

Defendant’s Exhibit A-56 [Tr. p. 580] is a letter from Strauss to Meyers agreeing that he will pay Meyers One Hundred and Twenty Thousand Dollars (\$120,000) as and when he receives payments from the District “in consideration of your services in acting for me in connection with the Golden Gate Bridge.”

Defendant’s Exhibit A-57 [Tr. p. 581] is a letter from Strauss to Meyers written a few weeks after Exhibit A-56 and in supplement thereof agreeing “to pay you as commission and in consideration of your services in securing

for me the appointment as Engineer . . . One Hundred Thousand Dollars” as and when Strauss received payments from the District.

Defendant’s Exhibit A-58 [Tr. p. 582] is a letter from Strauss to Meyers, dated April 27, 1933, some four years after Exhibits A-56 and A-57, referring to the agreements shown by said exhibits, reciting that \$104,250 has been paid thereon by Strauss to Meyers, and that there is a balance due from Strauss to Meyers of \$110,000.

Defendant’s Exhibit A-79 [Tr. p. 742] is a letter from Strauss to Meyers showing enclosures therein of copies of letters to Strauss from John W. Weeks, Major Schulz, Secretary of War Hurley, President Fillmer of the Bridge District, Ass’t Secretary of War Davidson, Major Ropes and George H. Harlan, all relating to phases of promotion or construction of the Golden Gate Bridge.

Other letters from Strauss to Meyers show: Defendant’s Exhibit A-81 [Tr. p. 748] that Meyers was in New York City representing Strauss in reference to the sale of the bond issue for the construction of the Bridge; A-83 [Tr. p. 752] that Meyers was in New York on matters for Strauss and the Bridge; Defendant’s Exhibits A-84 [Tr. p. 756], A-86 [Tr. p. 770], A-87 [Tr. p. 776], A-88 [Tr. p. 780] from Strauss to Meyers in New York City relating to financing and other phases of the promotion and construction of the Bridge.

Space forbids a detailed analysis of other letters from Strauss to Meyers, admitted in evidence, but they are of like nature to those above mentioned and set forth.

The Government is not in position to complain that it was unfairly prejudiced by the admission of these letters from Strauss to Meyers, in view of its contention throughout the case that Meyers was not connected or associated with the Joseph B. Strauss interests in the promotion and construction of the Golden Gate Bridge. The Government having made an issue out of such connection or association, both in the Indictment and the evidence, the defendant was entitled to show by any competent evidence available to him that the connection or association actually had existed. The declarations of Mr. Strauss in his letters to Meyers were competent on the issue raised by the Government under the rule that declarations against interest by a person since deceased may be admitted in evidence.

But, the admission of this *competent* evidence on behalf of defendant Meyers did not justify the admission of *incompetent and hearsay evidence*, consisting of Government's Exhibit 98, no matter how damaging the former might be to the Government's case. Such damage cannot be classified as "unfair prejudice", as claimed in the Government's Brief (pp. 46-49).

Moreover, the letters from Strauss to Meyers constituted the best evidence of the connection and relationship, business and otherwise, between those parties because they were contemporaneous of the matters discussed therein. In this respect these letters were a part of the *res gestae*; they were current and spontaneous statements and expressions by Strauss of the facts and circumstances

surrounding and growing out of the relationship of the parties, and wholly exclude any idea of deliberation or falsification. These letters meet every requirement of the *res gestae* rule as stated in 22 C. J. S. 1044, Section 662, as follows:

“ . . . the ultimate test is spontaneity and logical relation to the main event, and where an act or declaration springs out of the transaction while the parties are still laboring under the excitement and strain of the circumstances and at a time so near it as to preclude the idea of deliberation or fabrication, it is to be regarded as spontaneous within the meaning of the rule.”

But, the letter from Strauss to Swenson (Government's Exhibit 98) does not come within the above statement of the *res gestae* rule. On the contrary, that letter should have been excluded under the inhibition thus stated in 22 C. J. S. 1047, Section 662:

“Conversely, matters so separated or disconnected in point of time or circumstance from the act charged as not to be a part of a continuous transaction are no part of the *res gestae* of the act.”

Moreover, the letter from Strauss to Swenson (G. Ex. 98) comes within the condemnation of the rule that

“ . . . a declaration as to a mere belief of the declarant is not admissible when such belief is not a fact in issue.” (22 C. J. S. 1049.)

II.

Assignment of Error No. IV.

Appellant's fourth assignment of error is:

"The District Court erred in permitting the witness Earnest A. Troeger, to testify on behalf of the Government as follows: Over the objection of defendant appellant. That said testimony related to incidents which happened approximately 14 years before the alleged violation of the postal laws, as set forth in the Indictment; that said testimony was incompetent, immaterial and too remote and the only purpose for said testimony, apparently was to show a similar scheme and device." [Tr. pp. 107-108.]

The witness, Ernest A. Troeger, was called by the Government and, over repeated objections by appellant, testified concerning alleged business relations between his deceased father and appellant, H. Harry Meyers, during a period commencing January 22, 1920, and ending January 23, 1923, which period was approximately 14 years before the transactions complained of in the Indictment in this case.

The following colloquy between the trial court and counsel shows the *ostensible* purpose of the Government in introducing the evidence of the witness Troeger and the reason assigned by the court for its admission:

"Mr. Hile: I can state the purpose, if Your Honor please.

The Court: Similar conduct and acts, for the purpose of establishing intent in this case?

Mr. Hile: Yes, that is one of the aspects of the whole situation.

Mr. Simon: I object to it as being too remote, if that is the purpose." [Tr. p. 911.]

Later on, following other argument and colloquy between court and counsel, the court said:

"This line of evidence will be admitted with limitations. The jury is instructed, of course, that it is admitted not to prove any issue in this case other than the bearing it might have, if any, upon the element of intent, which is an important element in this case." [Tr. pp. 912, 913.]

The Troeger testimony was also objected to upon the grounds that the same was incompetent and immaterial.

It is apparent from the record, however, that the *principal* reason for the introduction of the testimony of the witness Troeger was to get before the jury the supposed fact that appellant Meyers was unable to pay a certain note for \$7,500.00 to the father of the witness Troeger as and when the same became due. Letters from appellant Meyers to John F. R. Troeger were offered and admitted in evidence over objections of appellant and the same are identified in the transcript as Plaintiff's Exhibits 103, 104, 105 and 106 which letters stated in substance that Meyers would have to have additional time within which to pay said note, without disclosing the reasons therefor. It is also apparent from the record that the evidence of the witness Troeger was introduced for the purpose of showing acts and transactions constituting fraud and deceit similar to those alleged in the Indictment in this case and also to show a similar scheme and device to perpetrate the alleged fraud.

The evidence of the witness, Ernest A. Troeger, was not only too remote and unrelated to the issues on trial to show intent by similar acts or conduct, but it was wholly insufficient to establish any element of fraud, deception or bad faith by appellant Meyers in his relations with the father of the witness Troeger.

A.

Troeger Transactions Too Remote to Show Intent.

The transactions testified to by the witness, Ernest A. Troeger, occurred approximately 14 years before the alleged criminal acts charged in the Indictment in this case. This is too remote.

The rule here applicable is stated in 20 Am. Jur., page 282, Section 303, as follows:

“Where fraud is an issue, evidence of other similar frauds perpetrated by the same person *on or about the same time*, is admissible particularly where the acts are all part of one general scheme or plan to defraud.” (Italics ours.)

And the rule is stated in 10 R. C. L., page 938, Section 105, as follows:

“Similar fraudulent acts are admissible if committed *at or about the same time*, and when the same motive may reasonably be supposed to exist, with a view to establish the intent of the defendant in respect to the matters charged against him in the declaration. To show fraudulent intent with which representations were made, evidence of other fraudulent representations of a similar character, made by the same person, *and about the same time*, is admissible.” (Italics ours.)

It must be remembered that no alleged similar acts, conduct or transactions by appellant were shown by the Government between the Troeger transactions in 1920-1923 and the Indictment in this case and hence the Troeger transactions were too remote under the rule stated, *supra*.

B.

The Troeger Evidence Considered as a Whole Showed No Fraud, Deceit or Misrepresentations.

The witness Troeger's father, John F. R. Troeger, was an inventor. Appellant entered into a contract with him [Plaintiff's Exhibit 101, Tr. pp. 900 and 901] for the promotion and development of certain inventions. Appellant agreed to pay Mr. Troeger the sum of \$7,500.00 and gave his note therefor. Upon the maturity of this note, on or about July 7, 1920, appellant paid \$1,500.00 thereon and gave a renewal note for \$6,000.00 [Tr. p. 904], stating at the time he would not be able to pay the renewal when due. Thereafter, however, said note was paid in full. [Tr. p. 921.] The note transaction obviously did not involve any element of fraud, deceit or misrepresentation, otherwise, the same would not have been paid.

On January 23, 1923, the witness Troeger's father, John F. R. Troeger, entered into a settlement agreement between himself and H. Harry Meyers, American Lux Products Corporation, Trans-Lux Company and Percy N. Furber. [Tr. pp. 926-931.] This contract recited that because of certain disagreements between the parties

mentioned therein, a complete, full and final settlement was desirable and necessary and, pursuant thereto, John F. R. Troeger received in cash the sum of \$2,857.00 and 1,500 shares of the common stock of the American Lux Products Corporation.

Notwithstanding said contract of settlement, the witness Troeger was permitted to testify that Meyers never paid the note to his father; that Meyers had promised his father a lifetime job and did not keep his promise, but instead terminated the contract of employment. The written contract of employment of John F. R. Troeger appears in the transcript as Plaintiff's Exhibit No. 108 [Tr. pp. 916 and 917] and provides that "This agreement is to commence on the first day of February, 1920, and to end on the 31st day of January, 1922," during which period Mr. Troeger was to receive a salary of \$3,600.00 per annum, payable in equal monthly installments. John F. R. Troeger was not discharged nor was his contract terminated. Mr. Troeger was notified on January 24, 1922, by the American Lux Products Corporation, with whom his contract of employment was made, that said contract "ending the 31st of this month, will not be renewed, due to the fact that we have to conserve in order to go on with our work and we find it necessary to take this action." [Tr. p. 919.]

It thus appears that each and all of the damaging statements made by the witness Troeger in his testimony, were shown to have no existence in fact and hence did not constitute similar acts, conduct and transactions from which intent to deceive or defraud could be implied.

III.

Appellant Was Convicted on Incompetent and Hearsay Evidence.

Appellant's conviction resulted principally from the erroneous admission of incompetent and hearsay evidence. If this incompetent and hearsay evidence had been excluded the remaining competent evidence would have been insufficient to warrant a verdict of guilty. That this is true is shown by the fact that appellant was not convicted at the first trial of the case when this evidence was not offered or admitted.

The Government's case against appellant rested mainly upon two charges: first, that he was falsely represented as being a man of wealth and influence; and, second, that he was falsely represented as having been associated with the Joseph B. Strauss interests in the promotion and construction of the Golden Gate Bridge. Excluding the incompetent and hearsay evidence on these two charges, the Government's case had little, if any, evidence to support the charges.

A.

Appellant's Association With Strauss.

The Government offered the letter from Strauss to Swenson [G. Ex. 98] and the printed volume describing the history of the construction of the Golden Gate Bridge [G. Ex. 95] as its chief evidence that appellant had no connection with Strauss in that enterprise. Appellant has already shown that the letter and printed volume were incompetent and hearsay. We are here primarily concerned with the prejudicial effect of these exhibits, and the arguments based upon and the inferences drawn from

them by the Government. Without this evidence the trial Judge said:

“ . . . as far as the triers of the facts were concerned, *that would have compelled them* to resolve the allegation in the Indictment that there was an intimate and close relationship between Strauss and the defendant, and that the defendant was one of the major characters in the construction of the Golden Gate Bridge.” [Tr. p. 1452.] (Italics ours.)

This evaluation of the evidence was and is eminently correct. The Court, no doubt, had in mind the scores of letters which Strauss had written to appellant showing unmistakably that appellant was the trusted adviser and associate of Strauss in the promotion and building of the Bridge from 1929 to 1934; that appellant secured the appointment of Strauss as Engineer of the Bridge District; that he was active in shaping favorable public opinion for the Bridge; that he was Strauss' representative in selling the bonds issued to pay for the Bridge; and that Strauss had paid him more than \$200,000.00 for the services thus rendered. In other words, the evidence of the association and connection between Strauss and appellant was so overwhelming that the trial court says it “would have compelled” the jury to find that Meyers “was one of the major characters in the construction of the . . . Bridge.”

Conversely, the harmful effect of the letter of Strauss to Swenson and of the printed volume mentioned, both incompetent and hearsay, is apparent from the trial court's statement, *supra*. It is thus obvious that, but for these, the Government's charge of fraud, based upon alleged lack of association between Strauss and appellant, would have completely failed.

B.

Appellant's Influence and Financial Standing.

The Government charged that appellant had no standing or influence, or financial ability to drill the Frenchman Hills well. To bolster up these charges it offered the evidence of Ernest A. Troeger to show that about 14 years before the Indictment in this case appellant did not promptly pay a \$7,500.00 note to his father, and evidence concerning appellant's income tax returns for years subsequent to the matters and transactions set forth in the Indictment. It is clear that such evidence was prejudicial in that it tended to rebut evidence that appellant had about \$400,000.00 in cash, and other resources [Tr. pp. 886, 887], when he became interested in the Frenchman Hills project; and such evidence also tended to minimize the fact that appellant paid \$196,000.00 on the costs of drilling the Frenchman Hills well. That this incompetent evidence was highly prejudicial cannot be doubted.

Even Government's own evidence shows that appellant had standing sufficiently high and good as to enable General Goethals, Engineer and Builder of the Panama Canal, to recommend him to Joseph B. Strauss. [Tr. p. 867.]

Conclusion.

The admission of the incompetent and hearsay evidence detailed in appellant's opening brief and in this brief, over objections and exceptions of appellant was prejudicial, deprived him of a fair trial and resulted in his conviction.

The incompetent and hearsay evidence so admitted related to vital issues in the case and was doubtless the determining factor in the verdict of the jury.

Wherefore, it is respectfully submitted that the judgment of the trial court should be reversed and appellant be granted a new trial.

Respectfully submitted,

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